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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 736, 740, 742, 743, 744, 750, 758, 762, 764, 774

[Docket No. 120501427-2427-01]

RIN 0694-AF65

Proposed Revisions to the Export Administration Regulations: Implementation of Export Control Reform; Revisions to License Exceptions after Retrospective Regulatory Review

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed Rule.

SUMMARY: President Obama directed the Administration in August 2009 to conduct a broad-based review of the U.S. export control system in order to identify additional ways to enhance national security. Then-Secretary of Defense Gates described in April 2010 the initial results of that effort and why fundamental reform of the U.S. export control system is necessary to enhance national security. Since then, the Bureau of Industry and Security (BIS), Department of

Commerce, and the Directorate of Defense Trade Controls (DDTC), Department of State, have published multiple proposed amendments to the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), respectively, that would implement various aspects of what has become known as the Export Control Reform Initiative. One aspect of the reform effort would result in the transfer of control to the EAR of items the President determines no longer warrant control under ITAR, once congressional notification requirements and corresponding amendments to the ITAR and the EAR are completed. This proposed rule addresses issues pertaining to transition of control over such items. It complements the Export Control Transition Plan, a proposed policy statement and request for comments issued by DDTC. (INSERT FR CITE).

This rule proposes to amend the EAR by, *inter alia*, establishing a General Order regarding continued use of State authorizations for a specified period, by broadening license exceptions in the EAR to make them consistent with ITAR exemptions, and by extending the validity period of Commerce licenses. Any modifications to License Exceptions specific to particular types of items, such as firearms, will be addressed in the proposed rules pertaining specifically to those items. This rule also addresses specific concerns raised in public comments on recent rules by proposing a revised *de minimis* rule for “600 series” items, i.e., the items the President determines no longer warrant control on the USML and that would thus be controlled in the “600 series” of the EAR’s Commerce Control List (CCL). Finally, this rule proposes additional conforming changes that are necessary to implement the Export Control Reform Initiative, but also would affect items currently subject to the EAR, such as changes to reporting thresholds for the Automated Export System.

In addition, this proposed rule addresses issues raised by the public in response to a notice requesting comments on the streamlining of BIS's regulations published on August 5, 2011 (76 FR 47527). On January 18, 2011, President Barack Obama issued Executive Order 13563, affirming general principles of regulation and directing government agencies to conduct retrospective reviews of existing regulations. Although the Export Control Reform Initiative did not originate with Executive Order 13563, it is entirely consistent in spirit and substance. BIS issued a notice soliciting public comment on streamlining its regulations pursuant to the President's Executive Order. In response to the public comments received on the notice, and consistent with BIS's internal analysis, this rule proposes revisions to license exceptions for government uses and temporary exports that streamline and update unduly complex or outmoded provisions in addition to broadening certain provisions to implement Export Control Reform. Other proposed changes to the EAR warranted by the Executive Order will be addressed in separate Federal Register notices. Commerce's full plan can be accessed at: <http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

DATES: Comments must be received by BIS no later than [INSERT DATE 45 DAYS FROM DATE OF PUBLICATION].

ADDRESSES: Comments may be submitted to the Federal rulemaking portal (<http://www.regulations.gov>). The regulations.gov ID for this notice of inquiry is: BIS-2012-0024. Comments may also be submitted via e-mail to publiccomments@bis.doc.gov or on

paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2099B, U.S. Department of Commerce, Washington, DC 20230. Please refer to RIN 0694-AF65 in all comments and in the subject line of e-mail comments. All comments must be in writing. All comments (including any personal identifiable information) will be available for public inspection and copying. Those wishing to comment anonymously may do so by submitting their comment via regulations.gov and leaving the fields for identifying information blank.

FOR FURTHER INFORMATION CONTACT: Hillary Hess or Timothy Mooney, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security at 202-482-2440 or rp2@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Export Control Reform Initiative

The objective of the Export Control Reform Initiative is to protect and enhance U.S. national security interests. On July 15, 2011 (76 FR 41958), BIS published a proposed rule, *Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)*. The July 15 rule proposed a regulatory framework to control items on the USML that, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)(1)), the President

determines no longer warrant control under the AECA. These items would be controlled under the Export Administration Regulations (EAR) once the congressional notification requirements of section 38(f) and corresponding amendments to the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130) and its USML and the EAR and its Commerce Control List (CCL) are completed. After the July 15 rule established this regulatory framework, subsequent rules, including the November 7, 2011 (76 FR 68675) proposed rule, proposed specific changes to the USML and the CCL.

Once the ITAR and its USML are amended so that they control only the items that provide the United States with a critical military or intelligence advantage or otherwise warrant the controls of the ITAR, and the EAR is amended to control military items that do not warrant USML controls, the U.S. export control system will enhance national security by (i) improving interoperability of U.S. military forces with allied countries, (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services, and (iii) allowing export control officials to focus government resources on transactions of more concern.

All references to the United States Munitions List (“USML”) in this rule are to the list of defense articles that are controlled for purposes of export or temporary import pursuant to the International Traffic in Arms Regulations (“ITAR”), 22 CFR Parts 120 et seq., and not to the list of defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purpose of permanent import under its regulations at 27 CFR Part 447. Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), all defense articles

controlled for export or import are part of the “USML” under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for purposes of permanent import are on the United States Munitions Import List (USMIL). The transfer of defense articles from the ITAR’s USML to the EAR’s CCL for purposes of export controls does not affect the list of defense articles controlled on the USMIL under the AECA for purposes of permanent import controls.

Public Comments on the July 15 and November 7 Proposed Rules

BIS received 43 comments in response to the July 15 proposed rule. Those who submitted comments generally supported the proposed amendments to the EAR and the Export Control Reform Initiative objectives. However, they also expressed both general concerns about the process of transition from State to Commerce jurisdiction and specific concerns regarding certain proposed provisions. With respect to general concerns regarding the transition, nine commenters addressed perceived burdens caused by implementation of Export Control Reform, specifically expressing concern over shorter validity periods for licenses under the EAR than the ITAR and difficulty complying with two sets of regulations in the same transaction. They urged incremental implementation, including grandfathering of ITAR licenses and continuing opportunities for public participation in the rulemaking process. Ten commenters found that certain ITAR exemptions were broader than EAR license exceptions. While these comments on implementation concerns were outside the scope of the July 15 rule, they did anticipate issues that BIS planned to address in this proposed rule. One commenter requested adoption of a single licensing form, which is outside the scope of this rule but nonetheless something the Administration has announced it is developing.

With respect to specific proposed provisions, fourteen commenters found the July 15 proposal regarding a revised *de minimis* rule for “600 series” items too complex and unworkable.

Commenters stated that having a 10 percent *de minimis* rule for “600 series” items and a 25 percent *de minimis* rule for all other items subject to the EAR would be extremely burdensome, if not impossible, for the commenters to calculate.

Three commenters on the July 15 rule requested clarification regarding application of the China military end-use restriction to “600 series” items.

Similar to the July 15 rule, BIS received public comments regarding implementation concerns in response to the November 7 rule. Implementation concerns were generally outside the scope of the November 7 rule, which proposed CCL entries for aircraft and related items the President determines do not warrant control on the USML; however, five commenters raised the issue that certain ITAR exemptions were broader than comparable EAR license exceptions.

BIS plans to address comments received in response to the July 15 and November 7 proposed rules, to the extent that they are germane to this proposed rule, when this rule is published in final form.

The “600 Series” and U.S. Arms Embargoed Countries

As noted in the preamble to the July 15 rule, items determined to no longer warrant control under the ITAR would be controlled by a new series of ECCNs identified by the “6” at the third character of each ECCN and collectively referred to as “600 series” items. While these items no longer would be subject to the ITAR, they still would be military items or items “specially designed” for military uses. BIS is not suggesting by their inclusion on the CCL that they are “dual-use” items. The CCL controls “dual use” (e.g., items designed for both military and civil applications), exclusively military, and other types of items warranting control. The amendments at issue in this part of the Export Control Reform Initiative would merely add significantly more military items to controls of the EAR. Applications to export such items to countries subject to U.S. arms embargoes as described in §126.1 of the ITAR and subsequently in proposed §740.2 (a)(12) of the EAR in the July 15 rule would be subject to the general policy of denial proposed in the November 7 rule. (An exception to this would be those items contained in the .y paragraph of each “600 series” ECCN; while they are military items, they are so militarily insignificant that licenses would not be required except for export to terrorist supporting countries or for a military end use in China.) Another general principle underlying the incorporation of the “600 series” into the EAR is that because items subject to the EAR are less militarily significant than those subject to the ITAR, EAR exceptions should not be more restrictive than comparable ITAR exemptions. Similarly, EAR procedures should not be more restrictive than comparable ITAR procedures. As one public comment in response to the July 15 rule stated, “[r]egulatory changes that have the unintended result of being more onerous than current requirements are not beneficial for U.S. national security or economic interests and will not further the stated objectives of comprehensive Export Control Reform.” BIS agrees.

Revisions Addressed in this Proposed Rule

This rule proposes certain measures to ease the transition for those items moving from State to Commerce jurisdiction, including establishing a General Order regarding continued use of State authorizations for a specified period, broadening license exceptions consistent with ITAR exemptions, and extending the two-year validity period of Commerce licenses to match State's four-year period. In the course of broadening certain license exceptions, this rule streamlines and updates existing text to reduce undue complexity. This rule also addresses concerns regarding the *de minimis* rule by proposing alternative provisions. Specifically, this rule responds to public comments by proposing a uniform 25 percent *de minimis* rule for reexports of "600 series" items to all countries, except for countries subject to U.S. arms embargoes, which would be subject to a zero percent *de minimis* rule.

Moreover, this rule augments the framework constructed by the July 15 rule (and modified by the November 7 rule) by proposing additional changes to the EAR necessary to implement Export Control Reform. Note that in addition to applying to items transitioning from the ITAR, many revisions also would apply to items currently subject to the EAR, such as changes to validity periods and reporting thresholds for the Automated Export System.

Finally, in response to Executive Order 13563, this rule proposes revisions to license exceptions for government uses and temporary exports that streamline and update unduly complex or outmoded provisions in addition to broadening certain provisions to implement Export Control Reform. On August 5, 2011, BIS issued a notice soliciting public comments on all of its existing

and proposed rules, with the exception of those rules related to the Export Control Reform Initiative, which solicit public comment separately. The comment period for the notice closed on February 1, 2012. BIS received 22 comments. Three issues raised in these comments involve issues related to transition issues and are addressed in this proposed rule. The comments relevant to this rule suggested various amendments to make the EAR more consistent with the ITAR and State Department policy. License Exception GOV should be broadened to include those acting on behalf of the U.S. Government. License Exception TSU should be broadened to allow release of technology in the United States by U.S. universities to their employees. License validity periods should be lengthened. These comments dovetailed with comments submitted in response to the July 15 and November 7 rules, and with BIS's own analysis. These proposed changes are discussed in the License Exception and License Issuance sections. Other comments on the August 5 notice will be summarized in future proposed rules as those issues are addressed. Commerce's full plan can be accessed at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

Transition

This proposed rule details, and solicits public comment on, the amendments to the EAR that would be necessary to effect the transition of items from the ITAR. In addition to protecting and enhancing U.S. national security, Export Control Reform is expected to generate significant long-term benefits for U.S. exporters in the form of more efficient and flexible export controls that are more tailored to the significance of the item. In contrast, the ITAR, as a result of the

Arms Export Control Act, is a less flexible regulatory structure. The least significant part or component is generally controlled the same way as the most significant part or component and the end item itself. In the short term, however, both government and industry will need to adjust licensing and compliance procedures.

BIS anticipates that the Department of State, Directorate of Defense Trade Controls (DDTC) will set forth approximately a two-year period during which, under certain circumstances, holders of DDTC authorizations that include items transitioning to the EAR may continue to use those authorizations. This proposed rule should be read in conjunction with DDTC's proposed policy statement regarding its Export Control Reform Transition Plan (INSERT FR CITE). Consistent with DDTC's policy statement, all provisos, conditions, or other requirements placed on ITAR authorizations will continue to apply as long as such authorizations are in use.

General Order

This rule proposes to add a new General Order No. 5 (Supplement No. 1 to part 736 of the EAR). In the proposed General Order No. 5, holders of State licenses for items that transition to Commerce jurisdiction who wish to begin using BIS authorizations may do so as early as the effective date of the rule that transfers jurisdiction of their items by returning their DDTC licenses in accordance with §123.22 of the ITAR and complying with the EAR.

On the effective date of each rule that adds an item to the CCL that was previously subject to the ITAR, that item will be subject to the EAR. Authorizations issued by DDTC before the

transition date for those items may continue in effect as specified by DDTC in the Department of State's Export Control Reform Transition Plan. Foreign consignees or end users with items that have transitioned from State to Commerce jurisdiction must comply with the EAR for subsequent reexports or transfers.

Exporters, temporary importers, manufacturers, and brokers are cautioned to closely monitor ITAR and EAR compliance concerning Department of State licenses and agreements for items transitioning from USML to CCL. Parties who discover that they may have violated the ITAR, the EAR, or any license or authorization issued thereunder, are strongly encouraged to consult with BIS or DDTC and avail themselves of the appropriate department's current, established procedures for submitting voluntary disclosures and for requesting specific authorization to take any further actions in connection with that item.

License Exceptions

License Exceptions are published authorizations set forth in part 740 of the EAR that allow exports, reexports, and in-country transfers that would otherwise require a license to proceed without one if certain conditions are met. The same principle underlies ITAR exemptions. As part of the general effort under the Export Control Reform Initiative to begin harmonizing the definitions, structure, and licensing aspects of the EAR and the ITAR, BIS undertook a comprehensive review of both EAR license exceptions and ITAR exemptions. While the EAR are generally believed to offer more flexibility than the ITAR, the BIS review of its regulations and public comments on the July 15 rule identified certain specific instances where the EAR

would inadvertently be more restrictive. According to public comments received in response to the July 15 and November 7 proposed rules, exporters found that exemptions under the ITAR for some of their items were broader than license exceptions under the EAR. These comments stemmed from concerns over implementing Export Control Reform for transactions of interest to those commenters rather than from any specific BIS proposals to revise license exceptions.

This rule proposes to harmonize the provisions of several EAR license exceptions with several ITAR exemptions, as set out in detail below, but only insofar as they are permitted by law and otherwise relevant to “600 series” items and other items subject to the EAR. In particular, BIS has no authority to change the scope of license exceptions available for items controlled for Missile Technology reasons because of statutory restrictions. *See* section (6)(l) of the Export Administration Act of 1979, as amended, 50 U.S.C. appx. § 2405(l).

BIS welcomes comments on the differences between license exceptions under the EAR and exemptions under the ITAR and the issues they raise for those attempting to comply with both bodies of regulation or to transition from ITAR compliance to EAR compliance. Given the differences between the two systems, BIS is interested in comments regarding where deviations in the scope of control under the EAR versus the ITAR may be appropriate, especially with respect to treatment of reexports and in-country transfers. Note that license exceptions closely linked to specific items, such as firearms, that have not yet been proposed for control under the EAR will likely be addressed in rules related to those items. Descriptions of specific scenarios make particularly helpful examples.

Restrictions on All License Exceptions

Proposed new paragraphs (a)(15) and (a)(16) to §740.2 describe restrictions on all license exceptions. This rule proposes restrictions on certain exports for which prior notification to Congress will be made, as explained below in the discussion of major defense equipment. In addition, this rule proposes to revise a restriction originally proposed in the July 15 rule regarding the use of license exceptions for “600 series” items to U.S. arms embargoed countries, which was subsequently proposed to be amended in *Revisions to the Export Administration Regulations (EAR): Control of Personal Protective Equipment, Shelters, and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)* published on June 7, 2012 (77 FR 33688). The text set forth in this rule uses as a baseline the proposed provision published on June 7, 2012. This rule proposes restricting most license exception eligibility for “600 series” items not only destined to U.S. arms embargoed countries, but also for “600 series” items manufactured in or shipped from those countries as well, consistent with the ITAR (§126.1(a)).

License Exception TMP

This rule proposes a complete revision of §740.9, License Exception Temporary Imports, Exports and Reexports (TMP) paragraphs (a) (Temporary exports and reexports) and (b) (Exports of items temporarily in the United States) to streamline the existing exception, which successive amendments over the years have rendered increasingly difficult to read. This streamlining is consistent with the retrospective review and regulatory improvement directed in

E.O. 13563 and is not intended to substantively change the scope of TMP beyond adding explicit authority for in-country transfers and broadening to match the scope of the ITAR exemptions. Proposed amendments to streamline other EAR License Exceptions and other EAR provisions will be addressed in separate Federal Register notices. Changes in country scope of certain provisions reflect the limitations set forth in part 746 of the EAR (Embargoes and Special Controls) unless otherwise noted. References to exports of items controlled for missile technology reasons were deleted because such exports are restricted by §740.2(a)(5). Temporary exports under License Exception TMP to a U.S. subsidiary, affiliate, or facility abroad would no longer be limited to exports to Country Group B countries in order to make TMP consistent with §123.16(b)(9) of the ITAR.

This rule would add notes to the temporary imports paragraph of License Exception TMP that incorporate concepts explicit in §§123.19 and 123.13 of the ITAR. In this paragraph, notes are added stating that a shipment originating in Canada or Mexico that incidentally transits the United States en route to a delivery point in the same country does not require a license, and that a shipment by air or vessel from one location in the United States to another location in the United States via a foreign country does not require a license. This rule proposes to add a note to TMP referencing the USMIL and a conforming change to part 734 noting that defense articles on the USMIL are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purpose of permanent import under its regulations at 27 CFR Part 447. This rule also proposes to delete references to outdated forms in this paragraph. Finally, this rule proposes to remove the term “unwanted” from §740.9(b)(3), because the term, which was undefined, was confusing to the public.

BIS welcomes comments on both substantive and structural aspects of the proposed clarifying changes to TMP.

License Exception RPL

This rule proposes to revise RPL to allow export or reexport of spares up to \$500 in total value. RPL would also be revised to remove the requirement that the ability to return serviced commodities and software or replace defective or unacceptable U.S.-origin equipment be limited to the original exporters. These revisions would correspond to §123.16(b)(2) of the ITAR, the availability of which is not limited to original exporters. The July 15 rule proposed to revise §740.10, License Exception Repair and Replacement (RPL) to reflect the proposed new definitions of certain terms, such as “part” or “component,” and to allow replacement parts for defense articles to be exported under RPL. This rule does not modify the proposed July 15 RPL revisions.

License Exception GOV

Consistent with the retrospective review and regulatory improvement directed in Executive Order 13563, this rule proposes a complete revision of §740.11, License Exception GOV (Governments; International Organizations; International Inspections under the Chemical Weapons Convention; and the International Space Station). Because existing GOV contains many provisions that exclude items on the Wassenaar Arrangement’s Sensitive and Very

Sensitive Lists, and those provisions were always intended to match the Wassenaar Arrangement's Sensitive and Very Sensitive Lists, this rule proposes to add those lists to the EAR as supplements to the Commerce Control List and revise GOV to refer to the new supplements. This revision would shorten and simplify GOV, allowing its current supplement to §740.11 text to be consolidated in the main section. The supplements containing the Sensitive and Very Sensitive Lists would be new Supplement Nos. 6 and 7 to part 774 of the EAR, as discussed below.

The July 15 proposed rule restricted "600 series" items' eligibility for GOV to governments of those 36 countries listed in §740.20(c)(1) (License Exception STA) and the United States. The November 7 rule proposed certain changes to License Exception GOV with respect to restricting certain aircraft-related software and technology. This rule modifies those proposed provisions by excluding "software" prohibited by proposed Supplement No. 4 to part 740 from eligibility for GOV. However, proposed Supplement No. 4 to part 740 is not republished in this rule; nor does BIS seek comment on its content.

The July 15 rule proposed, and the November 7 rule proposed a modification to a provision in License Exception STA to allow exports, reexports, or transfers (in-country) of "600 series" items to non-governmental end users as long as the items were for ultimate government end use. This rule similarly proposes expanding GOV to authorize items consigned to non-governmental end users, such as U.S. Government contractors, acting on behalf of the U.S. Government in certain situations, subject to written authorization from the appropriate agency and additional export clearance requirements. This rule also adds provisions for exports made under the

direction of the U.S. Department of Defense consistent with §§125.4(b)(1), 125.4(b)(3) and 126.6(a) of the ITAR. This rule also proposes a note clarifying the authority for foreign military sales consistent with §126.6(c) of the ITAR.

Generally, this rule does not propose expansion of License Exception GOV beyond the broadening necessary to create equivalent EAR authorizations to correspond to existing ITAR authorizations. This rule does propose, however, an expansion to the scope of countries eligible to receive items on the Sensitive List under the proposed revised §740.11(a) (International Safeguards) and (c) (Cooperating Governments). The revised country scope for governments eligible to receive items on the Sensitive List under the proposed revised §740.11(c) would be the same governments of those 36 countries listed in §740.20(c)(1) (License Exception STA).

BIS welcomes comments on both substantive and structural aspects of the proposed clarifying changes to License Exception GOV.

License Exception TSU

This rule would revise §740.13 License Exception Technology and Software – Unrestricted (TSU) to include explicitly training information in the operation technology authorized, as it is in §125.4(b)(5) of the ITAR. This rule also proposes adding TSU authorization for the release of software and technology in the United States by U.S. universities to their bona fide and full-time regular foreign national employees and other foreign nationals to correspond with a similar authorization in §125.4(b)(10) of the ITAR and an authorization at § 125.4(b)(4) of the ITAR for

copies of technology previously authorized for export to same recipient. This authorization would, however, be subject to the end-use and end-user restrictions in part 744 of the EAR, would not be available for encryption-related software controlled for “EI” and other software and technology controlled for “MT” (Missile Technology) reasons, and would not be eligible for nationals of countries subject to U.S. arms embargoes for “600 series” items.

Such changes are part of the broader, long-term Export Control Reform Initiative effort to harmonize the EAR’s and the ITAR’s definitions, terms, and, to the extent warranted, license exceptions. Efforts to harmonize other EAR and ITAR terms will be addressed in future *Federal Register* notices. BIS nonetheless encourages comments on all ITAR and EAR terms, phrases, and provisions that warrant harmonization.

License Exception STA

This rule proposes an additional limitation on use of License Exception Strategic Trade Authorization (STA) in §740.20. This proposed revision would limit use of License Exception STA for “600 series” items to foreign parties that have received U.S. items under a license issued either by BIS or DDTC. This ensures that such parties will have been vetted by a U.S. Government licensing process. For purchasers, intermediate consignees, ultimate consignees, and end users that have not been so vetted, a license would be required even for STA-eligible items. Once that license has been issued, subsequent eligible exports may be made under STA.

This rule also proposes that for “600 series” items, the prior consignee statement set forth in §740.20(d)(2) contain the consignee’s confirmation that the items are for ultimate government end use and agreement to permit the U.S. Government to conduct end-use checks. These revisions provide a structure for verifying that “600 series” items are used as intended and an assurance that end-use checks can be performed expeditiously.

License Issuance

Current ITAR licenses are generally valid for four years compared to two years under the EAR. Agreements under the ITAR may be valid as long as ten years. In order to harmonize the EAR with the ITAR, this rule proposes to revise §750.7(g) to extend the validity period of BIS licenses from two years to four years, with some exceptions, unless otherwise specified on the license at the time that it is issued. Exporters may request an extended validity period pursuant to §750.7(g)(1) beyond four years. Such requests will be reviewed on a case-by-case basis. Grounds for requesting extension would include having agreements previously approved by the Department of State for a longer period of time. BIS licenses generally designate one ultimate consignee and may have many designated end users. DDTC authorizations may designate multiple foreign end users. This rule proposes to revise §750.7(c) explicitly to allow direct shipments to approved end users.

License Review Policy

License applications made to BIS receive interagency review. For “600 series” items, this rule proposes to modify the section describing regional stability controls by adding to §742.6(b)(1) a policy of case-by-case review to determine whether the transaction is contrary to the national security or foreign policy interests of the United States. This proposed policy is consistent with the policy for State and Defense review of ITAR licenses. The July 15 and November 7 rules proposed certain changes to the license review policy in §742.6(b)(1). The July 15 proposal was adopted without change and published in final form on April 13, 2012 (77 FR 22199). This rule does not modify the proposed provisions from the November 7 rule, but the proposed provision is restated here for the public’s convenience and to facilitate a complete understanding of BIS’s license review policy proposal. As such, BIS is not seeking additional public comments on that provision in this rule.

Reporting and Notifications

The current EAR require reporting for exports of items on the Wassenaar Arrangement’s Sensitive List under license exception and those provisions were always intended to match the Wassenaar Arrangement’s Sensitive List. This rule would shorten the Wassenaar Arrangement reporting requirements section, found at §743.1, and would include a cross reference to the Sensitive List rather than setting forth ECCN paragraphs, much as was done in this rule’s proposed License Exception GOV.

As set forth in §123.15 of the ITAR, Section 36(c) of the Arms Export Control Act requires that a certification be provided to the Congress prior to approval of certain high-value exports of

major defense equipment, other defense articles, or firearms. Major defense equipment (MDE), for purposes of §§743.5 and 750.4 of the EAR, means any item of significant military equipment having a nonrecurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export. While this process is not required for items subject to the EAR, BIS would institute these procedures in the EAR for such MDE items subject to the EAR. This rule proposes the creation of a new §743.5, which would require exporters to notify BIS of such transactions for all exports except those made under License Exception GOV. When a license application is submitted, BIS would be able to, and will, draw the necessary information from the application to make the congressional notification. Section 740.2, restrictions on license exceptions, discussed above, would be revised to preclude use of license exceptions for such transactions.

To reflect the proposed changes to part 743, this rule proposes amending the title of this part to read, “Special Reporting and Notification.”

***De Minimis* U.S. Content in Foreign-Made Items and Foreign-Produced Direct Products of U.S. Technology**

Section 734.4 of the EAR sets forth the *de minimis* provisions, which provide that foreign-made items incorporating below *de minimis* levels of U.S. content are not subject to the EAR. The July 15 rule proposed a 10% *de minimis* level for “600 series” content. Many commenters found these proposed provisions confusing and anticipated difficulty implementing them, primarily due

to having different *de minimis* levels for different items going to the same country. Several of the public comments in response to the July 15 rule suggested simplifying the proposed *de minimis* provisions by allowing a 25% level for those countries eligible for paragraph (c)(1) of License Exception Strategic Trade Authorization (STA) (see §740.20). Two commenters to the November 7 proposed rule suggested that BIS adopt the existing 25% *de minimis* rule described in the Export Administration Act for all countries except those subject to U.S. arms embargoes, which would be subject to a zero percent *de minimis* rule. Based on a review of those comments and further interagency deliberation, this rule proposes a rule suggested by commenters to the November 7 rule, i.e., an exclusion of “600 series” U.S. content from eligibility for *de minimis* when the foreign-made items are destined to U.S. arms embargoed countries and, consistent with current EAR provisions, a 25% *de minimis* for all other destinations. This proposal, in addition to its relative simplicity, retains the status quo for “600 series” content destined to U.S. embargoed countries in that the ITAR effectively has a zero percent *de minimis* rule.

BIS believes that this proposal simultaneously addresses the calculation concerns of the commenters while tightening reexport controls over foreign-made items that contain any “600 series” content destined for countries subject to U.S. arms embargoes. This approach would advance the cause of the reform effort by reducing the negative impact of the “see-through” rule in place under the ITAR with respect to trade with most of the world; would be simpler to calculate; would maintain the EAR’s 25 percent *de minimis* rule for reexports to most countries; and would carry forward the ITAR’s zero percent *de minimis* rule with respect to reexports of military items to countries subject to U.S. arms embargoes. The latter aspect of the proposal furthers U.S. national security and foreign policy interests by discouraging, indeed prohibiting,

the reexport of foreign-made items containing “600 series” content to countries subject to U.S. arms embargoes while removing the incentive the ITAR creates for foreign buyers to avoid U.S.-origin content with respect to trade by and between other countries.

This rule also proposes changes to the regulations that address foreign-produced direct products of U.S. technology, which was a subject that was not addressed in the July 15 rule. Currently, certain foreign-produced direct products of U.S. technology are subject to the EAR: national security controlled items that are direct products of U.S. national security-controlled technology, when those products are destined to countries of concern for national security reasons (Country Group D:1) or terrorist-supporting countries (Country Group E:1). This proposed rule would expand these provisions by adding an additional country and product scope. Foreign-produced direct products of U.S.-origin “600 series” technology, or of a plant that is a direct product of U.S.-origin “600 series” technology, that are “600 series” items would be subject to the EAR when reexported to countries of concern for national security, chemical and biological weapons, missile technology or anti-terrorism reasons (Country Groups D:1, D:3, D:4 or E:1 in Supplement No 1 to part 740) or to a U. S. arms embargoed country (see §740.2(a)(12)). Foreign-made items subject to the EAR because of this rule would be subject to the same license requirements to the new country of destination as if of U.S. origin.

Because of the expansion of the provisions at §736.2(b)(3) to include “600 series” items, this rule proposes to remove the penultimate paragraph in Supplement No. 1 to part 764 that states that the standard denial order “does not prohibit any export, reexport, or other transaction subject

to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.”

China Military End Use

Section 744.21 of the EAR imposes a restriction on certain items destined for the People’s Republic of China for a “military end use,” defined as for incorporation into military items or for the use, development or production of military items. The July 15 rule proposed: (1) expanding the description of military items in the §744.21(f) definition of “military end use” to include “600 series” items; and (2) adding items controlled by the .y paragraphs in the “600 series” ECCNs to the list of items subject to this restriction (those listed in Supplement No. 2 to part 744 (List of Items Subject to the Military End-Use License Requirement of §744.21)). Three commenters requested clarification of whether 600 series and subparagraph .y items being exported to China would be subject to a policy of denial under the military end use controls. One commenter suggested that because such items have little or no military significance, they should be excluded from China military end use controls.

Based on the comments’ request for clarification and BIS’s internal analysis, this rule proposes to expand §744.21 to state explicitly that all “600 series” items are subject to this restriction. The basis for this revision is that items “specially designed” for a defense article or other military end item are presumptively for a military end use. If an item were “specially designed” for a civil or a dual-use application, it would not be controlled by the .y lists within some of the 600 series ECCNs. Therefore, the effect of this proposed change would be to impose a license

requirement for all “600 series” items, including .y items, destined to China, which would be reviewed pursuant to §744.21. This proposal replaces the July 15 proposed amendment to Supplement No. 2 to part 744; the July 15 proposed amendment to §744.21(f) is unchanged.

Export Clearance

Exporters enter information for both State- and Commerce-controlled transactions into the Automated Export System (AES). Many exports worth less than \$2500 are exempted from the requirement to enter information on the transaction into AES. This rule proposes to revise §758.1 to remove the low-value exemption for “600 series” items for all destinations, including Canada, and require AES filing for all “600 series” items. Requiring entry of “600 series” information regardless of value or destination will provide the U.S. Government with the same information on exports of these items under Commerce control as is now available for such items when they are subject to the ITAR. This rule also proposes to revise §758.1 to require AES filing for all exports under License Exception Strategic Trade Authorization (STA), regardless of value, to enable the U.S. Government to obtain information about low-value shipments of these items.

This rule proposes to preclude the option of post-departure filing for exports of “600 series” items because this option is not permitted for ITAR-controlled exports now. This rule also proposes removing the option of post-departure filing for License Exception STA and Authorization VEU because the nature of these authorizations requires pre-departure filing of this information to ensure compliance with their terms and conditions.

The provisions of §758.6 require exports to be accompanied by a Destination Control Statement (DCS) identifying the items as subject to the EAR. Given the nature of the “600 series” items and requirements related to them, this rule proposes a more specific DCS for “600 series” items that would require exporters to identify the ECCNs of all “600 series” items being exported in the text to ensure that consignees are aware that they have such items.

ECCN 0A919 and Supplement Nos. 6 and 7 to the Commerce Control List

This rule proposes to revise ECCN 0A919, which controls certain military commodities produced outside the United States, to conform to the proposed revisions of the *de minimis* and foreign-produced direct product rules set forth in this rule.

As described above, this rule proposes creating two new supplements to part 774, the Commerce Control List. New Supplement Nos. 6 and 7 would append to the Commerce Control List the Wassenaar Arrangement’s Sensitive and Very Sensitive Lists. These lists would be referenced by proposed revised provisions in License Exception GOV and Wassenaar Arrangement reporting requirements in part 743. While the items on the lists would be identified by ECCN rather than by Wassenaar Arrangement numbering, the item descriptions would be drawn directly from the Wassenaar Arrangement.

Relationship to the July 15 and November 7 proposed rules

As referenced above, the purpose of the July 15 proposed rule was to set up the framework to support the transfer of items from the USML to the CCL. To facilitate that goal, the July 15 proposed rule contained concepts that were meant to be applied across the EAR. However, as BIS undertakes rulemakings to move specific categories of items from the USML to the CCL, there may be unforeseen issues or complications that may require BIS to reexamine those concepts. The comment period for the July 15 proposed rule closed on September 13, 2011.

The November 7 proposed rule proposed modifications to that framework. The comment period for the November 7 rule closed on December 22, 2011.

To the extent that this rule's proposals affect any provision in the July 15 or November 7 proposed rules or any provision in those proposed rules affects this proposed rule, BIS will consider comments on those provisions so long as they are within the context of the changes proposed in this rule.

BIS believes that the following aspects of the July 15 and November 7 proposed rules are among those that could affect or be affected by this proposed rule:

- *De minimis* provisions in §734.4;
- Restrictions on use of license exceptions in §§740.2, 740.10, 740.11, and 740.20;
- Licensing policy under §742.6(b)(1);
- Reporting requirements under part 743;

- Addition of “600” series items to Supplement No. 2 to Part 744 – List of Items Subject to the Military End-Use Requirement of § 744.21; and
- Records to be retained under §762.2.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect the following approved collections: Simplified Network Application Processing System (control number 0694-0088), which includes, among other things, license applications; license exceptions (0694-0137); voluntary self-disclosure of violations (0694-0058); recordkeeping (0694-0096); export clearance (0694-0122); and the Automated Export System (0607-0152).

As stated in the proposed rule published at 76 FR 41958 (July 15, 2011), BIS believed that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted by approximately 16,000 annually. As the review of the USML has progressed, the interagency group has gained more specific information about the number of items that would come under BIS jurisdiction whether those items would be eligible for export under license exception. As of [INSERT DATE OF PUBLICATION], BIS believes the increase in license applications may be 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17 minutes each) under control number 0694-0088.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification is provided below.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of the Administration’s Export Control Reform Initiative. Under that initiative, the USML would be revised to be a “positive” list, *i.e.*, a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article’s military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the CCL. Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control Classification Numbers (ECCNs) known as the “600 series” ECCNs. In addition, some items currently on the Commerce Control List would move from existing ECCNs to the new 600 series ECCNs.

In particular, this rule proposes certain measures to ease the transition for those items moving from State to Commerce jurisdiction. The changes include establishing a General Order regarding continued use of State authorizations for a specified period, broadening license exceptions consistent with ITAR exemptions, and extending the two-year validity period of Commerce licenses to match State’s four-year period. In the course of broadening certain license exceptions, this rule streamlines and updates existing text to reduce undue complexity. This rule also addresses specific concerns raised in public comments on recent rules by proposing a revised *de minimis* rule for “600 series” items. Moreover, this rule proposes additional conforming changes that are necessary to implement the Export Control Reform Initiative, but also would affect items currently subject to the EAR, such as changes to reporting thresholds for the Automated Export System. Finally, in response to the President’s directive in Executive Order 13563, which directed agencies to conduct retrospective reviews of existing

regulations, this rule proposes revisions to license exceptions for government uses and temporary exports that streamline and update unduly complex or outmoded provisions in addition to broadening certain provisions to implement Export Control Reform.

In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR. By streamlining provisions of the EAR, BIS would make it easier to understand and comply with certain license exceptions, which in turn would allow exporters to avail themselves of these exceptions and reduce their licensing and compliance burdens. This rule also proposes broadening license exceptions and extending license validity periods to correspond to those available under the ITAR to avoid imposing burdens on exporters as a result of their items' changing jurisdictional status. These proposed changes may also reduce the burden small companies (and all other entities) who export non-"600 series" items on the CCL.

In addition, parts and components controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item, discouraging foreign buyers from incorporating such U.S. content. The availability of a *de minimis* rule under the EAR may reduce the incentive for foreign manufacturers to design out or avoid purchasing U.S.-origin parts and components. In response to comments on the July 15 rule, this rule proposes a simpler method of calculating *de minimis* value for "600 series" content. A simpler method of calculating *de minimis* reduces the likelihood of foreign manufacturers' designing out U.S.-origin parts and components, thus increasing the ability of

U.S. firms to compete in the global marketplace and to strengthen the U.S. defense industrial base.

In spite of the benefits detailed above, the need for exporters to change established licensing and compliance procedures as their items change jurisdiction will likely incur short-term costs (e.g., for database changes). This rule proposes an implementation plan to mitigate these short-term costs by allowing affected entities to continue operating under their existing authorizations and procedures over a two-year transition period should they chose to do so, while allowing the option to transition as of the effective date of the final rule.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by the a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, no IRFA is required and none has been prepared.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research
Science and technology

15 CFR Part 736

Exports

15 CFR Parts 740, 750 and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements

15 CFR Part 742

Exports, Terrorism

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information,
Exports, Reporting and recordkeeping requirements

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties

15 CFR Part 774

Exports, Reporting and recordkeeping requirements

For the reasons stated in the preamble, the Export Administration Regulations
(15 CFR parts 730 through 774) are proposed to be amended as follows:

15 CFR PART 734 -- [AMENDED]

1. The authority citations paragraph for part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

2. Section 734.3 is amended by adding a new paragraph (b)(1)(vi) to read as follows:

§734.3 Items subject to the EAR.

* * * * *

(b) * * *

(vi) *Bureau of Alcohol, Tobacco, Firearms and Explosives.* Unless otherwise noted, all references to the United States Munitions List (“USML”) are to the list of defense articles that are controlled for purposes of export and temporary import pursuant to the International Traffic in Arms Regulations (“ITAR”), 22 CFR Parts 120 *et seq.*, and not to the list of defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purpose of permanent import under its regulations at 27 CFR Part 447. Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), 22 U.S.C. § 2779, all defense articles

controlled for export or import are part of the “USML” under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for purposes of permanent import are on the United States Munitions Import List (USMIL). The transfer of defense articles from the ITAR’s USML to the EAR’s CCL for purposes of export controls does not affect the list of defense articles controlled on the USMIL under the AECA for purposes of permanent import controls.

* * * * *

3. Section 734.4 is amended by redesignating paragraph (a)(6) as paragraph (a)(7), and by adding a new paragraph (a)(6) to read as follows:

§734.4 De minimis U.S. content.

(a) Items for which there is no *de minimis* level.

* * * * *

(6) There is no *de minimis* level for foreign-made items that incorporate U.S.-origin “600 series” items when destined for a country subject to a U. S. arms embargo (see §740.2(a)(12) of the EAR).

* * * * *

15 CFR PART 736 -- [AMENDED]

4. The authority citations paragraph for part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

5. Section 736.2 is amended by revising paragraph (b)(3) to read as follows:

§736.2 General prohibitions and determination of applicability.

* * * * *

(3) General Prohibition Three — Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software (Foreign-Produced Direct Product Reexports).

* * * * *

(iv) *Additional country scope of prohibition for “600 series” items.* You may not, except as provided in paragraphs (b)(3)(vi) or (vii) of this section, reexport any “600 series” item subject to the scope of this General Prohibition 3 to a destination in Country Groups D:1, D:3, D:4, or E:1

(See Supplement No.1 to part 740 of the EAR) or to a U. S. arms embargoed country (see §740.2(a)(12) of the EAR).

(v) *Product scope of foreign-made items in the “600 series” subject to prohibition.* This General Prohibition 3 applies if a “600 series” item meets either the conditions defining the direct product of technology or the conditions defining the direct product of a plant in paragraph (b)(3)(v)(A) or (B) of this section:

(A) *Conditions defining direct product of technology for “600 series” items.* Foreign-made “600 series” items are subject to this General Prohibition 3 if the foreign-made items meet both of the following conditions:

(1) They are the direct product of technology or software that is in the “600 series” as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR, and

(2) They are in the “600 series” as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

(B) *Conditions defining direct product of a plant for “600 series” items.* Foreign-made “600 series” items are also subject to this General Prohibition 3 if they are the direct product of a complete plant or any major component of a plant if both of the following conditions are met:

(1) Such plant or component is the direct product of technology that is in the “600 series” as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR, and

(2) Such foreign-made direct products of the plant or component are in the “600 series” as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

(vi) *License Exceptions.* Each license exception described in part 740 of the EAR supersedes this General Prohibition 3 if all terms and conditions of a given exception are met and the restrictions in §740.2 do not apply.

(vii) “600 series” foreign-produced direct products of U.S. technology subject to this General Prohibition 3 do not require a license for reexport to the new destination unless the same item, if exported from the U.S. to the new destination, would have been prohibited or made subject to a license requirement by part 742, 744, 746, or 764 of the EAR.

6. Supplement No. 1 to part 736 is amended by adding General Order No. 5, to read as follows:

SUPPLEMENT NO. 1 TO PART 736 GENERAL ORDERS

General Order No. 5

General Order No. 5 of [INSERT DATE OF PUBLICATION OF FINAL RULE]; Authorization for Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)

(a) *Continued use of DDTC authorizations for items that become subject to the EAR.* Items the President has determined no longer warrant control under the USML will become subject to the EAR as rules that effect this transition are published and effective. Authorizations issued by the Directorate of Defense Trade Controls (DDTC) of the Department of State for transactions involving these items may continue in effect as specified by DDTC in [INSERT CITE TO STATE’S FINAL EXPORT CONTROL REFORM TRANSITION PLAN]. To use BIS authorizations for these items, exporters, reexporters, and transferors of such items may return DDTC licenses in accordance with §123.22 of the ITAR or terminate Technical Assistance Agreements, Manufacturing License Agreements, or Distribution and Warehousing Agreements

in accordance with §124.6 of the ITAR and thereafter export, reexport, or transfer (in-country) such items under applicable provisions of the EAR. No transfer (in-country) may be made of an item exported under a DDTC authorization containing provisos or other limitations without a license issued by BIS unless (i) the transfer (in-country) is authorized by an EAR License Exception and the terms and conditions of the License Exception have been satisfied or (ii), no license would otherwise be required under the EAR to export or reexport the item to the new end user.

(b) *Voluntary Self-Disclosure.* Parties to transactions involving transitioning items are cautioned to monitor closely their compliance with the EAR and the ITAR. Should a possible or actual violation of the EAR or ITAR, or of any license or authorization issued thereunder, be discovered, the person or persons involved are strongly encouraged to submit a Voluntary Self-Disclosure to the Office of Export Enforcement, in accordance with §764.5 of the EAR, or to DDTC, in accordance with §127.12 of the ITAR, as appropriate. Permission from the Office of Exporter Services, in accordance with §764.5(f) of the EAR, to engage in further activities in connection with that item may also be necessary.

(c) *Method of disclosure.* For violations involving items the President has determined no longer warrant control under the USML that occur or are discovered in the period during which DDTC allows continued use of State authorization for these items, disclosures and requests for permission to engage in further activities should be submitted to DDTC or BIS as appropriate.

15 CFR PART 740 -- [AMENDED]

7. The authority citations paragraph for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 7201 et seq.; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

8. Section 740.2 is amended by adding new paragraphs (a)(12), (a)(15) and (a)(16) to read as follows:

§740.2 Restrictions on all license exceptions.

(a) * * *

(12) Items classified under the “600 series” that are destined to, or were shipped from or manufactured in a country subject to a United States arms embargo (Afghanistan, Belarus, Burma, China, Cote d’Ivoire, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Fiji, Haiti, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, Yemen, and Zimbabwe) may not be authorized under any license exception except by License Exception TMP under §740.9(a)(12) or License Exception BAG under §740.14(h)(2) for exports to Afghanistan and Iraq, and License Exception GOV under §740.11(b)(2)(ii).

Note to paragraph (a)(12): Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the Federal Register. The list of arms embargoed destinations in this paragraph is drawn from 22 CFR §126.1 and State Department Federal Register notices related to arms embargoes (compiled at http://www.pmddtc.state.gov/embargoed_countries/index.html) and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this paragraph and the countries identified by the State Department as subject to a U.S. arms embargo (in the Federal Register), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

* * * * *

(15) Items classified under the “600 series” are not eligible for any license exception, except to U.S. government end users under License Exception GOV (§740.11(b)), when they are destined to a country *outside* the countries listed in §740.20(c)(1) (License Exception STA) and are:

- (i) Major defense equipment sold under a contract in the amount of \$14,000,000 or more;
- (ii) Other “600 series” items sold under a contract in the amount of \$50,000,000 or more; or
- (iii) Firearms controlled under ECCN 0A601 under a contract in the amount of \$1,000,000 or more.

(16) Items classified under the “600 series” are not eligible for any license exception, except to U.S. government end users under License Exception GOV (§740.11(b)), when they are destined to a country listed in §740.20(c)(1) (License Exception STA) and are:

- (i) Major defense equipment sold under a contract in the amount of \$25,000,000;
- (ii) Other “600 series” items sold under a contract in the amount of \$100,000,000 or more; or
- (iii) Firearms controlled under ECCN 0A601 under a contract in the amount of \$1,000,000 or more.

9. Section 740.9 is amended by revising paragraphs (a) and (b) to read as follows:

§740.9 Temporary imports, exports, and reexports (TMP).

(a) *Temporary exports, reexports, and transfers (in-country).* License Exception TMP authorizes exports, reexports, and transfers (in-country) of items for temporary use abroad (including use in or above international waters) subject to the conditions specified in this paragraph (a). No item may be exported or reexported under this paragraph (a) if an order to acquire the item has been received before shipment; with prior knowledge that the item will stay abroad beyond the terms of this License Exception; or when the item is for subsequent lease or rental abroad.

(1) *Tools of trade.* Exports, reexports, or transfers (in-country) of commodities and software as tools of trade for use by the exporter or employees of the exporter may be made only to destinations other than Country Group E:2, Sudan or Syria; for Sudan, see paragraph (a)(2) of this section. The tools of trade must remain under the “effective control” of the exporter or the exporter's employee. Eligible items are usual and reasonable kinds and quantities of tools of trade for use in a lawful enterprise or undertaking of the exporter. Tools of trade include, but are not limited to, equipment and software as is necessary to commission or service items, provided

that the equipment or software is appropriate for this purpose and that all items to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been lawfully exported or reexported. Tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. Software used as a tool of trade must be protected against unauthorized access. Examples of security precautions to help prevent unauthorized access include the following:

(A) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for activities that involve the transmission and use of the software authorized under this license exception;

(B) Use of password systems on electronic devices that store the software authorized under this license exception; and

(C) Use of personal firewalls on electronic devices that store the software authorized under this license exception.

(2) *Sudan: Tools of Trade.* (i) *Permissible users.* A non-governmental organization or an individual staff member, employee or contractor of such organization traveling to Sudan at the direction or with the knowledge of such organization may export, reexport, or transfer (in-country) under this paragraph (a)(2).

(ii) *Authorized purposes.* Any tools of trade exported, reexported, or transferred (in-country) under this paragraph must be used to support activities to implement the Doha Document for Peace in Darfur; to provide humanitarian or development assistance in Sudan, to support activities to relieve human suffering in Sudan, or to support the actions in Sudan for humanitarian or development purposes; by an organization authorized by the Department of the

Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR §538.521 in support of its OFAC-authorized activities; or to support the activities to relieve human suffering in Sudan in areas that are exempt from the Sudanese Sanctions Regulations by virtue of the Darfur Peace and Accountability Act and Executive Order 13412.

(iii) *Method of export and maintenance of control.* The tools of trade must accompany (either hand carried or as checked baggage) a traveler who is a permissible user of this provision or be shipped or transmitted to such user by a method reasonably calculated to assure delivery to the permissible user of this provision. The permissible user of this provision must maintain “effective control” of the tools of trade while in Sudan.

(iv) *Eligible items.* The only tools of trade that may be exported to Sudan under this paragraph (a)(2) are:

(A) Commodities controlled under ECCNs 4A994.b (not exceeding an adjusted peak performance of 0.008 weighted teraFLOPS), 4A994.d, 4A994.e (other than industrial controllers for chemical processing), 4A994.g and 4A994.h and “software” controlled under ECCNs 4D994 or 5D992 to be used on such commodities. Software must be loaded onto such commodities prior to export or reexport or be exported or reexported solely for servicing or in-kind replacement of legally exported or reexported software. All such software must remain loaded on such commodities while in Sudan;

(B) Telecommunications equipment controlled under ECCN 5A991 and “software” controlled under ECCN 5D992 to be used in the operation of such equipment. Software must be loaded onto such equipment prior to export or be exported or reexported solely for servicing or in-kind replacement of legally exported or reexported software. All such software must remain loaded on such equipment while in Sudan;

(C) Global positioning systems (GPS) or similar satellite receivers controlled under ECCN 7A994; and

(D) Parts and components that are controlled under ECCN 5A992, that are installed with, or contained in, commodities in paragraphs (a)(2)(iv)(A) and (B) of this section and that remain installed with or contained in such commodities while in Sudan.

(3) *Tools of trade: temporary exports and reexports of technology by U.S. persons.* (i) This paragraph authorizes usual and reasonable kinds and quantities of technology for use in a lawful enterprise or undertaking of a U.S. person to destinations other than Country Group E:2, Sudan or Syria. Only U.S. persons or their employees traveling or on temporary assignment abroad may export, reexport, transfer (in-country) or receive technology under the provisions of this paragraph (a)(3).

(A) Because this paragraph (a)(3) does not authorize any new release of technology, employees traveling or on temporary assignment abroad who are not U.S. persons may only receive under TMP such technology abroad that they are already eligible to receive through a current license, a license exception other than TMP, or because no license is required;

(B) A U.S. employer of individuals who are not U.S. persons must demonstrate and document for recordkeeping purposes the reason that the technology is needed by such employees in their temporary business activities abroad on behalf of the U.S. person employer, prior to using this paragraph (a)(3). This documentation must be created and maintained in accordance with the recordkeeping requirements of part 762 of the EAR; *and*

(C) The U.S. person must retain supervision over the technology that has been authorized for export or reexport under these or other provisions.

(ii) The exporting, reexporting, or transferring party and the recipient of the technology must take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used overseas. Examples of security precautions to help prevent unauthorized access include the following:

(A) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for e-mail and other business activities that involve the transmission and use of the technology authorized under this license exception;

(B) Use of password systems on electronic devices that will store the technology authorized under this license exception; and

(C) Use of personal firewalls on electronic devices that will store the technology authorized under this license exception.

(iii) Technology authorized under these provisions may not be used for foreign production purposes or for technical assistance unless authorized by BIS.

(iv) Encryption technology controlled by ECCN 5E002 is ineligible for this license exception.

(4) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported, reexported, or transferred (in-country) to all destinations except Country Group E:2 (see Supplement No. 1 to part 740), provided that:

(i) The parts would qualify for shipment under paragraph (a)(4)(iii) of this section if exported as one-for-one replacements;

(ii) The kits remain under effective control of the exporter or an employee of the exporter; and

(iii) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception RPL and the defective parts returned (see “parts”, §740.10(a) of this part).

(5) *Exhibition and demonstration.* This paragraph (a)(5) authorizes exports, reexports, and transfers (in-country) of commodities and software for exhibition or demonstration in all destinations except Country Group E:1 (see Supplement No. 1 to this part) provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains “effective control” over the commodities and software while they are abroad. The commodities and software may not be used when abroad for more than the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by BIS. However, before or after an exhibition or demonstration, pending movement to another site, return to the United States or the foreign reexporter, or BIS approval for other disposition, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains “effective control” over their disposition. The export documentation for this type of transaction must show the exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(6) *Inspection and calibration.* Commodities to be inspected, tested, calibrated, or repaired abroad may be exported and reexported under this paragraph (a)(6) to all destinations except Country Group E:1.

(7) *Containers.* Containers for which another license exception is not available and that are necessary for shipment of commodities may be exported, reexported, and transferred (in-

country) under this paragraph (a)(7). However, this paragraph does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export under either a license exception or a license.

(8) *Assembly in Mexico.* Commodities may be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquiladora) under this paragraph (a)(8), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(9) *News media.* (i) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may be temporarily exported or reexported for accredited news media personnel (i.e., persons with credentials from a news gathering or reporting firm) to Cuba, North Korea, Sudan, or Syria (see Supplement No. 1 to part 740) if the commodities:

(A) Are retained under "effective control" of the exporting news gathering firm in the country of destination;

(B) Remain in the physical possession of the news media personnel in the country of destination. The term physical possession for purposes of this paragraph (a)(9) means maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(C) Are removed with the news media personnel at the end of the trip.

(ii) When exporting under this paragraph (a)(9) from the United States, the exporter must email a copy of the packing list or similar identification of the exported commodities, to bis.compliance@bis.doc.gov specifying the destination and estimated dates of departure and

return. The Office of Export Enforcement (OEE) may spot check returns to assure that the provisions of this paragraph (a)(9) are being used properly.

(iii) Commodities or software necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported or reexported under paragraph (a)(1), *tools of trade*, of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(1), *tools of trade* and (a)(9), *news media*, of this section do not preclude independent accredited contract personnel, who are under control of news gathering firms while on assignment, from using these provisions, provided that the news gathering firm designates an employee of the contract firm to be responsible for the equipment.

(10) *Temporary exports to a U.S. person's foreign subsidiary, affiliate, or facility abroad.* Components, parts, tools, accessories, or test equipment exported by a U.S. person to a subsidiary, affiliate, or facility owned or controlled by the U.S. person, if the components, parts, tools, accessories, or test equipment are to be used to manufacture, assemble, test, produce, or modify items, provided that such components, parts, tools, accessories or test equipment are not transferred (in-country) or reexported from such subsidiary, affiliate, or facility, alone or incorporated into another item, without prior authorization by BIS.

(11) *U.S. persons.* For purposes of this section 740.9, a U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the United States, or any jurisdiction within the United States (e.g., corporation, business

association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States).

(12) *Body armor.* (i) *Exports to countries not identified in § 740.2(a)(12).* U.S. persons may temporarily export one set of body armor classified under ECCN 1A613.d to countries not identified in § 740.2(a)(12), provided that:

(A) A declaration by the U.S. person and an inspection by a customs officer are made;

(B) The body armor is with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(C) The body armor is for that person's exclusive use and not for reexport or other transfer of ownership.

(ii) *Exports to Afghanistan or Iraq.* U.S. persons may temporarily export one set of body armor classified under ECCN 1A613.d to Afghanistan or Iraq, provided that:

(A) A declaration by the U.S. person and an inspection by a customs officer are made;

(B) The body armor is with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed);

(C) The body armor is for that person's exclusive use and not for reexport or other transfer of ownership; and

(D) For temporary exports to Iraq, the U.S. person utilizing the license exception is either a person affiliated with the U.S. Government traveling on official business or is a person not affiliated with the U.S. Government but traveling to Iraq under a direct authorization by the Government of Iraq and engaging in humanitarian activities for, on behalf of, or at the request of the Government of Iraq.

(iii) Body armor controlled under ECCN 1A005 is eligible for this license exception under paragraph (a)(1) of this section.

(13) *Destinations.* Destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country specified in any authorizing paragraph of this section, or any national thereof.

(14) *Return or disposal of items.* All items exported, reexported, or transferred (in-country) under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, reexport, or transfer to the United States or other country from which the items were so transferred. Items not returned shall be disposed of or retained in one of the following ways:

(i) *Permanent export or reexport.* An exporter or reexporter who wants to sell or otherwise dispose of the items abroad, except as permitted by this or other applicable provision of the EAR, must apply for a license in accordance with §§ 748.1, 748.4 and 748.6 of the EAR. (Part 748 of the EAR contains for more information about license applications.) The application must be supported by any documents that would be required in support of an application for export license for shipment of the same items directly from the United States to the proposed destination.

(ii) *Use of a license.* An outstanding license may also be used to dispose of items covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same items to the same new ultimate consignee in the new country of destination.

(iii) *Authorization to retain item abroad beyond one year.* An exporter who wants to retain an item abroad beyond one year must apply for a license in accordance with §§748.1, 748.4 and

748.6 of the EAR to BIS 90 days prior to the expiration of the one-year period. The application must include the name and address of the exporter, the date the items were exported, a brief product description, and the justification for the extension. If BIS approves the extension, the exporter will receive authorization for a one-time extension not to exceed six months. BIS normally will not allow an extension for items that have been abroad more than one year, nor will a second six-month extension be authorized. Any request for retaining the items abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (a)(14)(i) of this section.

(b) Exports of items temporarily in the United States.

NOTE 1 to paragraph (b): A commodity withdrawn from a bonded warehouse in the United States under a 'withdrawal for export' customs entry is considered as 'moving in transit'. It is not considered as 'moving in transit' if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

NOTE 2 to paragraph (b): Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a) while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.

NOTE 3 to paragraph (b): A shipment originating in Canada or Mexico that incidentally transits the United States en route to a delivery point in the same country does not require a license.

NOTE 4 to paragraph (b): A shipment by air or vessel from one location in the United States to another location in the United States via a foreign country does not require a license.

NOTE 5 to paragraph (b): All references to the United States Munitions List (“USML”) in this rule are to the list of defense articles that are controlled for purposes of export or temporary import pursuant to the International Traffic in Arms Regulations (“ITAR”), 22 CFR Parts 120 et seq., and not to the list of defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purpose of permanent import under its regulations at 27 CFR Part 447. Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), 22 U.S.C. § 2779, all defense articles controlled for export or import are part of the “USML” under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for purposes of permanent import are on the United States Munitions Import List (USMIL). The transfer of defense articles from the ITAR’s USML to the EAR’s CCL for purposes of export controls does not affect the list of defense articles controlled on the USMIL under the AECA for purposes of permanent import controls.

(1) *Items moving in transit through the United States.* Subject to the following conditions, the provisions of paragraph (b)(1) authorize export of items moving in transit through the United States under a Transportation and Exportation (T.&E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs and Border Protection Office.

(i) Items controlled for national security (NS) reasons, nuclear proliferation (NP) reasons, or chemical and biological weapons (CB) reasons may not be exported to Country Group D:1, 2, or 3 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:1 under this section.

(iii) The following may *not* be exported from the United States under this paragraph (b)(1):

(A) Commodities shipped to the United States under an International Import Certificate, Form BIS-645P;

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The authorization to export in paragraph (b)(1) shall apply to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the nature of the commodities or software or their origin, notwithstanding any other provision of paragraph (b)(1).

(2) *Items imported for marketing, or for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for marketing, or for display at an exhibition or trade fair *and* were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

(i) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba may not be exported unless the U.S. Government had licensed the import from that country.

(ii) Items may be exported to any destination other than the country from which imported except:

- (A) Items imported into the United States under an International Import Certificate;
- (B) Exports to Country Group E:1 (see Supplement No. 1 to part 740); or
- (C) Exports to Country Group D:1, 2, or 3 (see Supplement No. 1 to part 740) of items controlled for national security (NS) reasons, nuclear nonproliferation (NP) reasons, or chemical and biological weapons (CB) reasons, respectively.

(3) *Return of foreign-origin items.* A foreign-origin item may be returned under this license exception to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States, except that no foreign-origin items may be returned to Cuba.

(4) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs and Border Protection, the Food and Drug Administration, or other U.S. Government agency may be returned to the country of origin, except to:

- (i) A destination in Cuba; or
- (ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR parts 500-599).

10. Section 740.10 is amended:

- a. By removing and reserving paragraph (b)(2)(iii);
- b. By removing and reserving paragraph (b)(3)(ii); and
- c. By revising paragraph (a)(3)(ii), to read as follows:

§740.10 License Exception Servicing and replacement of parts and equipment (RPL)

(a) * * *

(3) * * *

(ii) No “parts,” “components,” “accessories,” or “attachments” may be exported to be held abroad as spares for future use, unless the value of the “parts,” “components,” “accessories,” or “attachments” is less than \$500 per shipment and no more than 24 shipments per year are made to each approved end user. Replacements may be exported to replace spares that were authorized to accompany the export of equipment or other end items, as those spares are used in the repair of the equipment or other end item. This allows maintenance of the stock of spares at a consistent level as the parts, components, accessories, or attachments are used.

* * * * *

11. Section 740.11 is revised to read as follows:

§740.11 Governments, International Organizations, International Inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel; agencies of cooperating governments; international inspections under the Chemical Weapons Convention; and the International Space Station.

(a) *International Safeguards.* (1) *Scope.* The International Atomic Energy Agency (IAEA) is an international organization that establishes and administers safeguards, including Additional Protocols, designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

Euratom is an international organization of European countries with headquarters in Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes. This paragraph (a) authorizes exports and reexports of commodities or software to the IAEA and Euratom, and reexports by IAEA and Euratom for official international safeguard use, as follows:

(i) Commodities or software consigned to the IAEA at its headquarters in Vienna, Austria or its field offices in Toronto, Ontario, Canada or in Tokyo, Japan for official international safeguards use.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use.

(iii) Commodities or software consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities or software and returns the commodities or software to the locations described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when they become obsolete, are no longer required, or are replaced.

(iv) Commodity or software shipments may be made by persons under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(v) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited safeguarded nuclear activities described in §744.2(a)(3) of the EAR.

(vi) When commodities or software originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may be disposed of by destruction or by reexport or transfer in accordance with the EAR.

(2) *Restrictions.* (i) Items on the Sensitive List (see Supplement No. 6 to part 774) may not be exported or reexported under this paragraph (a), *except* to the countries listed in §740.20(c)(1) (License Exception STA).

(ii) Items on the Very Sensitive List (see Supplement No. 7 to part 774) may not be exported or reexported under this paragraph (a).

(iii) Encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002 may not be exported or reexported under this paragraph (a).

(iv) Without prior authorization from the Bureau of Industry and Security, nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by “electronic assemblies,” which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of processors so that the APP of the aggregation exceeds the APP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR.

(v) “600 series” items may not be exported or reexported under this paragraph (a), *except* to the countries listed in §740.20(c)(1) (License Exception STA).

(iv) Technology or software prohibited by Supplement No. 4 to this part may not be exported or reexported under this paragraph (a).

(b) *United States Government.* (1) *Scope.* The provisions of paragraph (b) authorize exports and reexports to personnel and agencies of the U.S. Government and certain exports by the Department of Defense. “Agency of the U.S. Government” includes all civilian and military departments, branches, missions, government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American States. Therefore, shipments may not be made to these non-government national or international agencies, except as provided in paragraph (b)(2)(i) of this section for U.S. representatives to these organizations.

(2) *Eligibility.* (i) *Items for personal use by personnel and agencies of the U.S. Government.* This provision is available for items in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and household employees. Items for personal use include household effects, food, beverages, and other daily necessities.

(ii) *Exports, reexports, and transfers made by or consigned to a department or agency of the U.S. Government.* This paragraph authorizes exports, reexports, and transfers of items when made by or consigned to a department or agency of the U.S. Government solely for its official use or for carrying out any U.S. Government program with foreign governments or international

organizations that is authorized by law and subject to control by the President by other means.

This paragraph does not authorize a department or agency of the U.S. Government to make any export, reexport, or transfer that is otherwise prohibited by other administrative provisions or by statute. Contractor Support Personnel of a department or agency of the U.S. Government are eligible for this authorization when in the performance of their duties pursuant to the applicable contract or other official duties. ‘Contractor Support Personnel’ for the purpose of this provision means those persons who provide administrative, managerial, scientific or technical support under contract to a U.S. Government department or agency (e.g., contractor employees of Federally Funded Research Facilities or Systems Engineering and Technical Assistance contractors). This authorization is not available when a department or agency of the U.S. Government acts as a transmittal agent on behalf of a non-U.S. Government person, either as a convenience or in satisfaction of security requirements.

(iii) Exports, reexports and transfers made for or on behalf of a department or agency of the U.S. Government.

(A) This paragraph authorizes exports, reexports and transfers of items solely for use by a department or agency of the U.S. Government, when:

- (1) The items are destined to a U.S. person; and
- (2) The item is exported, reexported, or transferred pursuant to a contract between the exporter and a department or agency of the U.S. Government;

(B) This paragraph authorizes exports, reexports, and transfers of items to implement or support any U.S. Government cooperative program, project, agreement, or arrangement with a foreign government or international organization or agency that is authorized by law and subject to control by the President by other means, when:

- (1) The agreement is in force and in effect, or the arrangement is in operation;
 - (2) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the program, agreement, or arrangement, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include the scope of items to be shipped under this license exception; the end users and consignees of the items; and any restrictions on the export, reexport, or transfer (including any restrictions on the foreign release of technology);
 - (3) The exporter, reexporter, or transferor has a contract with a department or agency of the U.S. Government for the provision of the items in furtherance of the agreement, or arrangement; and
 - (4) The items being exported, reexported, or transferred are not controlled for CW or CB reasons;
- (C) This paragraph authorizes the temporary export, reexport, or transfer of an item in support of any foreign assistance or sales program authorized by law and subject to the control of the President by other means, when:
- (1) The item is provided pursuant to a contract between the exporter and a department or agency of the U.S. Government; and
 - (2) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the program, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include the scope of items to be shipped under this license exception; the end users and consignees of the items; and any restrictions on the export, reexport, or transfer (including any restrictions on the foreign release of technology);

(D) This paragraph authorizes the export of commodities or software at the direction of the U.S. Department of Defense for an end use in support of an Acquisition and Cross Servicing Agreement (ACSA), when:

(1) The ACSA is between the U.S. Government and a foreign government or an international organization and is in force and in effect;

(2) The exporter, reexporter, or transferor has a contract with the department or agency of the U.S. government in furtherance of the ACSA; and

(3) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency responsible for the ACSA, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must include the scope of items to be shipped under this license exception; the end-users and consignees of the items; and any restrictions on the export, reexport, or transfer;

(E) This paragraph authorizes the export, reexport, or transfer of an item to implement or support a program directed by the Secretary of Defense, with the concurrence of the Secretary of State, to build the capacity of: a foreign government's national military forces in order for that country to conduct counterterrorist operations or participate in or support military and stability operations in which the U.S. Armed Forces are a participant; or a foreign country's maritime security forces to conduct counterterrorism operations, when:

(1) The program is in operation;

(2) The exporter, reexporter, or transferor has a contract with a department or agency of the U.S. Government in furtherance of the program; and

(3) The exporter, reexporter, or transferor obtains a written authorization from the Secretary or agency head of the U.S. Government department or agency authorized to implement the program, or his or her designee, authorizing the exporter, reexporter, or transferor to use this license exception. The written authorization must also include the scope of items to be shipped under this license exception; the end users and consignees of the items; and any restrictions on the export, reexport, or transfer (including any restrictions on the foreign release of technology);

(F) This paragraph authorizes the export, reexport, or transfer of Government Furnished Equipment (GFE) made by a U.S. Government contractor, when:

(1) The GFE will not be provided to any foreign person; and

(2) The export, reexport, or transfer is pursuant to a contract with a department or agency of the U.S. Government.

(G) *Electronic Export Information.* (1) Electronic Export Information (EEI) must be filed in the Automated Export System (AES) for any export made pursuant to paragraph (b)(iii) of this section. The EEI must identify License Exception GOV as the authority for the export and indicate that the applicant has received the relevant documentation from the contracting U.S. Government department, agency, or service. The Internal Transaction Number must be properly annotated on shipping documents (bill of lading, airway bill, other transportation documents, or commercial invoice) and shipment documents must include the following statement, “Property of [insert U.S. Government department, agency, or service]. Property may not enter the trade of the country to which it is shipped. Authorized under License Exception GOV. U.S. Government point of contact: [insert name and telephone number].”

(H) The exporter, reexporter, or transferor must obtain an authorization, if required, before any item previously exported, reexported, or transferred under this paragraph is resold, transferred,

reexported, transshipped, or disposed of to an end user for any end use, or to any destination other than as authorized by this paragraph (*e.g.*, property disposal of surplus defense articles outside of the United States), unless:

(1) The transfer is pursuant to a grant, sale, lease, loan, or cooperative project under the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended; or

(2) The item has been destroyed or rendered useless beyond the possibility of restoration.

(iv) *Items exported at the direction of the U.S. Department of Defense.* This paragraph authorizes technology to be released pursuant to an official written request or directive from the U.S. Department of Defense.

(v) This paragraph authorizes items sold, leased, or loaned by the U.S. Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961 when the items are delivered to representatives of such a country or organization in the United States and exported on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service.

(vi) This paragraph authorizes transfer of technology in furtherance of a contract between the exporter and an agency of the U.S. government, if the contract provides for such technology and the technology is not “development” or “production” technology for “600 series” items;

Note to paragraph (b)(2) to this section: Foreign Military Sales (FMS). The export of items subject to the EAR that are sold, leased, or loaned by the Department of Defense to a foreign country or international organization must be made in accordance with the FMS Program carried out under the Arms Export Control Act.

(c) *Cooperating Governments.* (1) *Scope.* The provisions of paragraph (c) authorize exports and reexports of the items listed in paragraph (c)(2) of this section to agencies of cooperating governments. “Agency of a cooperating government” includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating governments are the national governments of countries listed in Country Group A:1 (see Supplement No. 1 to part 740) and the national governments of Argentina, Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Singapore, Sweden, Switzerland and Taiwan.

(2) *Eligibility.* (i) *Items for official use within national territory by agencies of cooperating governments.* This license exception is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except items excluded by paragraph (c)(3) of this section.

(ii) *Diplomatic and consular missions of a cooperating government.* This license exception is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except items excluded by paragraph (c)(3) of this section.

(3) *Exclusions.* The following items may not be exported or reexported under this paragraph (c):

(i) Items on the Sensitive List (see Supplement No. 6 to part 774), *except* to the countries listed in §740.20(c)(1) (License Exception STA);

(ii) Items on the Very Sensitive List (see Supplement No. 7 to part 774);

(iii) Encryption items controlled for EI reasons under ECCNs 5A002, 5D002, or 5E002;

- (iv) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002.a.1.c, 6E001 “technology” according to the General Technology Note for the “development” of equipment in 6A002.a.1.c, and 6E002 “technology” according to the General Technology Note for the “production” of equipment in 6A002.a.1.c.;
 - (v) “600 series” items, *except* to the countries listed in §740.20(c)(1) (License Exception STA);
 - (vi) Items controlled for nuclear nonproliferation (NP) reasons;
 - (vii) Technology or software prohibited by Supplement No. 4 to this part;
 - (viii) Items listed as not eligible for STA in §740.20(b)(2)(ii).
- (4) *Reporting requirements.* See §743.1 of the EAR for reporting requirements for exports of certain items under this paragraph (c)(2).

(d) *International inspections under the Chemical Weapons Convention (CWC or Convention).*

(1) The Organization for the Prohibition of Chemical Weapons (OPCW) is an international organization that establishes and administers an inspection and verification regime under the Convention designed to ensure that certain chemicals and related facilities are not diverted from peaceful purposes to non-peaceful purposes. This paragraph (d) authorizes exports and reexports to the OPCW and exports and reexports by the OPCW for official international inspection and verification use under the terms of the Convention as follows:

- (i) Commodities and software consigned to the OPCW at its headquarters in The Hague for official international OPCW use for the monitoring and inspection functions set forth in the Convention, and technology relating to the maintenance, repair, and operation of such commodities and software. The OPCW must maintain effective control of such commodities, software and technology.

- (ii) Controlled technology relating to the training of the OPCW inspectorate.
- (iii) Controlled technology relating to a CWC inspection site, including technology released as a result of:
 - (A) Visual inspection of U.S.-origin equipment or facilities by foreign nationals of the inspection team;
 - (B) Oral communication of controlled technology to foreign nationals of the inspection team in the U.S. or abroad; and
 - (C) The application to situations abroad of personal knowledge or technical experience acquired in the U.S.
- (2) *Exclusions.* The following items may not be exported or reexported under the provisions of this paragraph (d):
 - (i) Inspection samples collected in the U.S. pursuant to the Convention;
 - (ii) Commodities and software that are no longer in OPCW official use. Such items must be transferred in accordance with the EAR.
 - (iii) “600 series” items, *except* to the countries listed in §740.20(c)(1) (License Exception STA).
 - (iv) Technology or software prohibited by Supplement No. 4 to this part.
- (3) *Confidentiality.* The application of the provisions of this paragraph (d) is subject to the condition that the confidentiality of business information is strictly protected in accordance with applicable provisions of the EAR and other U.S. laws regarding the use and transfer of U.S. goods and services.
- (4) *Restrictions.* Without prior authorization from the Bureau of Industry and Security, nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by “electronic assemblies,” which have been exported or reexported under

License Exception GOV and have been used to enhance such computers by aggregation of processors so that the APP of the aggregation exceeds the APP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR.

(e) *International Space Station (ISS)*. (1) *Scope*. The ISS is a research facility in a low-Earth orbit approximately 190 miles (350 km) above the surface of the Earth. The ISS is a joint project among the space agencies of the United States, Russia, Japan, Canada, Europe and Italy. This paragraph (e) authorizes exports and reexports required on short notice of certain commodities subject to the EAR that are classified under ECCN 9A004 to launch sites for supply missions to the ISS.

(2) *Eligible commodities*. Any commodity subject to the EAR that is classified under ECCN 9A004 and that is required for use on the ISS on short notice.

NOTE 1 to paragraph (e)(2): This license exception is not available for the export or reexport of parts and components to overseas manufacturers for the purpose of incorporation into other items destined for the ISS.

NOTE 2 to paragraph (e)(2): For purposes of this paragraph (e), 'short notice' means the exporter is required to have a commodity manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. 'Hatch-closure (final stowage)' means the final date specified by a

launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. The exporter or reexporter must receive the notification to supply the commodity for use on the ISS in writing. That notification must be kept in accordance with paragraph (e)(8) of this section and the Recordkeeping requirements in part 762 of the EAR.

(3) *Eligible destinations.* Eligible destinations are France, Japan, Kazakhstan, and Russia. To be eligible, a destination needs to have a launch for a supply mission to the ISS scheduled by a country participating in the ISS.

(4) *Requirement for commodities to be launched on an eligible space launch vehicle (SLV).* Only commodities that will be delivered to the ISS using United States, Russian, ESA (French), or Japanese space launch vehicles (SLVs) are eligible under this authorization. Commodities to be delivered to the ISS using SLVs from any other countries are excluded from this authorization.

(5) *Authorizations.* (i) *Authorization to retain commodity at or near launch site for up to six months.* If there are unexpected delays in a launch schedule for reasons such as mechanical failures in a launch vehicle or weather, commodities exported or reexported under this paragraph (e) may be retained at or near the launch site for a period of six (6) months from the time of initial export or reexport before the commodities must be destroyed, returned to the exporter or reexporter, or be the subject of an individually validated license request submitted to BIS to authorize further disposition of the commodities.

(ii) *Authorization to retain commodity abroad at launch country beyond six months.* If, after the commodity is exported or reexported under this authorization, a delay occurs in the launch

schedule that would exceed the 6-month deadline in paragraph (e)(5)(i) of this section, the exporter or reexporter or the person in control of the commodities in the launch country may request a one-time 6-month extension by submitting written notification to BIS requesting a 6-month extension and noting the reason for the delay. If the requestor is not contacted by BIS within 30 days from the date of the postmark of the written notification and if the notification meets the requirements of this subparagraph, the request is deemed granted. The request must be sent to BIS at the address listed in part 748 of the EAR and should include the name and address of the exporter or reexporter, the name and address of the person who has control of the commodity, the date the commodities were exported or reexported, a brief product description, and the justification for the extension. To retain a commodity abroad beyond the 6-month extension period, the exporter, reexporter or person in control of the commodity must request authorization by submitting a license application in accordance with §§748.1, 748.4 and 748.6 of the EAR to BIS 90 days prior to the expiration of the 6-month extension period.

(iii) *Items not delivered to the ISS because of a failed launch.* If the commodities exported or reexported under this paragraph (e) of this section are not delivered to the ISS because a failed launch causes the destruction of the commodity prior to its being delivered, exporters and reexporters must make note of the destruction of the commodities in accordance with the recordkeeping requirements under paragraph (e)(8)(ii) of this section and part 762 of the EAR.

(6) *Reexports to an alternate launch country.* If a mechanical or weather related issue causes a change from the scheduled launch country to another foreign country after a commodity was exported or reexported, then that commodity may be subsequently reexported to the new scheduled launch country, provided all of the terms and conditions of paragraph (e) of this section are met, along with any other applicable EAR provisions. In such instances, the 6-month

time limitation described in paragraph (e)(5)(i) of this section would start over again at the time of the subsequent reexport transaction. Note that if the subsequent reexport may be made under the designation No License Required (NLR) or some other authorization under the EAR, a reexporter does not need to rely on the provisions contained in this paragraph (e).

(7) *Eligible recipients.* Only persons involved in the launch of commodities to the ISS may receive and have access to commodities exported or reexported pursuant to this paragraph (e), except that:

- (i) No commodities may be exported, reexported, or transferred (in-country) under paragraph (e) to any national of an E:1 country listed in Supplement No. 1 to part 740 of the EAR, and
- (ii) No person may receive commodities authorized under paragraph (e) of this section who is subject to an end-user or end-use control described in part 744 of the EAR, including the entity list in Supplement No. 4 to part 744.

(8) *Recordkeeping requirements.* Exporters and reexporters must maintain records regarding exports or reexports made using this paragraph (e) of this section as well as any other applicable recordkeeping requirements under part 762 of the EAR.

(i) Exporters and reexporters must retain a record of the initial written notification they received requesting these commodities be supplied on short notice for a supply mission to the ISS, including the date the exporter or reexporter received complete documentation (i.e., the day on which the 45-day clock begins).

(ii) Exporters and reexporters must maintain records of the date of any exports or reexports made using this paragraph (e) and the date on which the commodities were launched into space for delivery to the ISS. If the commodities are not delivered to the ISS because of a failed launch

whereby the item is destroyed prior to being delivered to the ISS, this must be noted for recordkeeping purposes.

(iii) The return or destruction of defective or worn out parts or components is not required.

However, if defective or worn out parts or components originally exported or reexported pursuant to this paragraph (e) are returned from the ISS, then those parts and components may be either: returned to the original country of export or reexport; destroyed; or reexported or transferred (in-country) to a destination that has been designated by NASA for conducting a review and analysis of the defective or worn part or component. Documentation for this activity must be kept for recordkeeping purposes. No commodities that are subject to the EAR may be returned, under the provisions of this paragraph, to a country listed in Country Group E:1 in Supplement No. 1 to part 740 or to any person if that person is subject to an end-user or end-use control described in part 744 of the EAR. For purposes of paragraph (e) of this section, a ‘defective or worn out’ part or component is a part or component that no longer performs its intended function.

12. Section 740.13 is amended by adding a sentence to paragraph (a)(1), redesignating paragraph (f) as paragraph (h), and by adding new paragraphs (f) and (g) to read as follows:

§740.13 Technology and Software -- Unrestricted (TSU).

(a) * * * This paragraph (a) authorizes training, provided the training is limited to the operation, maintenance and repair technology identified in this paragraph.

* * * * *

(f) *Release of technology and source code in the U.S. by U.S. universities to their bona fide and full time regular employees.*

(1) *Scope.* This paragraph authorizes the release in the United States of “technology” and source code that is subject to the EAR by U.S. universities to foreign persons who are their bona fide and full time regular employees.

(2) *Eligible “technology” and source code.* Any “technology” or source code that is subject to the EAR may be released, except for “technology” or source code that is subject to a missile technology or EI reason for control or otherwise restricted from the use of license exceptions under §740.2 of the EAR.

(3) *Eligible foreign nationals (i.e., bona fide and full time regular employees of U.S. universities).* This exception is only available if:

(i) The employee’s permanent abode throughout the period of employment is in the U.S.;

(ii) The employee is not a national of a country subject to a U.S. arms embargo (see §740.2(a)(12)); and

(iii) The university informs the individual in writing that the “technology” or source code may not be transferred to other foreign persons without prior U.S. Government authorization.

(4) *Exclusions.* (i) No “technology” or source code may be released to a foreign national for purposes of establishing or producing items subject to the EAR;

(ii) No “technology” or source code may be released to a foreign person subject to a part 744 end-use or end-user control or where the release would otherwise be inconsistent with part 744; and

(iii) No “technology” or source code controlled for “EI” (encryption) or “MT” (Missile Technology) reasons may be released under this paragraph (f).

(g) *Copies of technology previously authorized for export to same recipient.* This paragraph authorizes the export, reexport, or transfer (in-country) of copies of technology previously authorized for export, reexport, or in-country transfer to the same recipient. This paragraph also authorizes the export, reexport, or transfer (in-country) of revised copies of such technology provided the following four conditions are met:

- (1) The item that the technology pertains to is the identical item;
- (2) The revisions to the technology are solely editorial and do not add to the content of technology previously exported, reexported, or transferred (in-country) or authorized for export, reexport, or transfer (in-country) to the same recipient;
- (3) The same recipient is not currently subject to an end-use control under the EAR (e.g., being subject to a Denial Order or Listed on the Entity List in Supplement No. 4 to part 744); and
- (4) The exporter, reexporter, or transferor has reason to believe the same recipient has used the technology in accordance with the original authorization.

13. Section 740.20 is revised to read as follows:

§740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(c) * * *

Note 2 to paragraph (c). License Exception STA under §740.20 (c)(1) may be used to authorize the export, reexport, or transfer (in-country) of “600 series” items only if the purchaser, intermediate consignee, ultimate consignee, and end user have previously been approved on a license issued by BIS or the Directorate of Defense Trade Controls (DDTC), U.S. Department of State.

* * * * *

(d) * * *

(1) * * *

(2) *Prior consignee statement.*

* * * * *

(vi) For “600 series items,” confirms that the items are for ultimate end use by a government of a country listed in § 740.20(c)(1), the United States Government, or a person in the United States, and agrees to permit an end-use check.

15 CFR PART 742 -- [AMENDED]

14. The authority citations paragraph for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

15. Section 742.6 is revised to read as follows:

§742.6 Regional stability.

(a) * * *

* * * * *

(b) *Licensing policy.* Applications for exports and reexports of “600 series” items will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States. Other applications for exports and reexports described in paragraph (a)(1), (a)(2), (a)(6) or (a)(7) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country’s military capabilities in a manner that would alter or destabilize a

region's military balance contrary to the foreign policy interests of the United States.

Applications for reexports of items described in paragraph (a)(3) of this section will be reviewed applying the policies for similar commodities that are subject to the ITAR. Applications for export or reexport of items classified under any "600 series" ECCN listed in paragraph (a)(1) of this section will also be reviewed in accordance with U.S. arms embargo policies and generally will be denied if destined for a destination set forth in §740.2(a)(12) of the EAR. Applications for export or reexport of "parts," "components," "accessories," "attachments," software, or technology "specially designed" or otherwise required for the F-14 aircraft will generally be denied.

15 CFR PART 743 -- [AMENDED]

16. The authority citations paragraph for part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

17. Part 743 is amended by revising its title to read:

Part 743 – Special Reporting and Notification

18. Section 743.1 is amended by revising paragraph (c) to read as follows:

§743.1 Wassenaar Arrangement.

* * * * *

(c) *Items for which reports are required.* You must submit reports to BIS under the provisions of this section only for exports controlled on the Sensitive List (see Supplement No. 6 to part 774).

* * * * *

19. New Section 743.5 is added to read as follows:

§743.5 Prior notifications to Congress of Exports of Major Defense Equipment and other transactions.

(a) *General requirement.* Applications to export items on the Commerce Control List that are Major Defense Equipment (MDE) and certain other controlled transactions will be notified to Congress as provided in this section before licenses for such items are issued. ‘Major Defense Equipment’ means any item having a nonrecurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000. Exports to U.S. government end users under License Exception GOV (§740.11(b)) do not require such notification.

(b) BIS will notify Congress prior to issuing a license authorizing the export of items controlled to a country *outside* the countries listed in §740.20(c)(1) (License Exception STA) that are:

- (1) Major Defense Equipment sold under a contract in the amount of \$14,000,000 or more;
- (2) Other “600 series” items sold under a contract in the amount of \$50,000,000 or more; or
- (3) Firearms controlled under ECCN 0A601 under a contract in the amount of \$1,000,000 or more.

(c) BIS will notify Congress prior to issuing a license authorizing the export of items controlled to a country listed in §740.20(c)(1) (License Exception STA) that are:

- (1) Major Defense Equipment sold under a contract in the amount of \$25,000,000 or more;
- (2) Other “600 series” items sold under a contract in the amount of \$100,000,000 or more; or
- (3) Firearms controlled under ECCN 0A601 under a contract in the amount of \$1,000,000 or more.

(d) In addition to information required on the application, the exporter must include a copy of the signed contract (including a statement of the contract’s value) for any proposed export described in paragraphs (b) or (c).

(e) *Address.* Munitions Control Division at bis.compliance@bis.doc.gov.

(f) BIS will hold the case without action (HWA) until the notification period has expired.

15 CFR PART 744 -- [AMENDED]

20. The authority citations paragraph for part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of September 21, 2011, 76 FR 59001 (September, 22, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012).

21. Section 744.21 is amended by redesignating paragraphs (a), (a)(1) and (a)(2) as paragraphs (a)(1), (a)(1)(i) and (a)(1)(ii) and by adding a new paragraph (a)(2) to read as follows:

§744.21 Restrictions on Certain Military End-Uses in the People's Republic of China (PRC).

(a)(1) * * *

(a)(2) *General prohibition.* In addition to the license requirements for “600 series” items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer any

“600 series” item, including .y items described in a “600 series” ECCN, to the PRC without a license.

15 CFR PART 750 -- [AMENDED]

22. The authority citations paragraph for part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; Sec 1503, Pub. L. 108-11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

23. Section 750.4 is amended by adding paragraph (b)(7) to read as follows:

§750.4 Procedures for processing license applications.

* * * * *

(b) Actions not included in processing time calculations. * * *

(7) Major Defense Equipment. Congressional notification, including consultations prior to notification, prior to the issuance of an authorization to export Major Defense Equipment (as defined in § 743.5 of the EAR).

24. Section 750.7 is amended:

- (a) By adding a new paragraph (c)(1)(ix); and
- (b) By revising both the introductory text in paragraphs (g) and paragraph (g)(1) to read as follows:

§750.7 Issuance of licenses.

(c) *Changes to the license.* * * *

* * * * *

(ix) Direct exports or reexports to approved end users on an export or reexport license, provided those end users are listed by name and location on such export or reexport license and the license does not contain any conditions that are specific to the ultimate consignee that cannot be complied with by the end user, such as a reporting requirement that must be made by the ultimate consignee.

(A) *Restriction.* Export and reexport licenses where a class of authorized end users is identified (e.g., by industry or by location), but specific end users are not identified by name on the export or reexport license are specifically excluded from this paragraph (c)(1)(ix). Direct exports or reexports to these types of end users are a material change to the export or reexport license. If exporters or reexporters wish to make such direct exports, they will need to submit an application for a new license in accordance with the instructions contained in Supplement

No. 1 to part 748 of the EAR.

(B) [RESERVED].

* * * * *

(g) *License validity period.* Licenses involving the export or reexport of items will generally have a four-year validity period, unless a different validity period has been requested and specifically approved by BIS or is otherwise specified on the license at the time that it is issued.

Exceptions from the four-year validity period include license applications reviewed and approved as an “emergency” (see §748.4(h) of the EAR) and license applications for items controlled for short supply reasons, which will be limited to a 12-month validity period.

Emergency licenses will expire no later than the last day of the calendar month following the month in which the emergency license is issued. The expiration date will be clearly stated on the face of the license. If the expiration date falls on a legal holiday (Federal or State), the validity period is automatically extended to midnight of the first day of business following the expiration date.

(1) *Extended validity period.* BIS will consider granting a validity period exceeding 4 years on a case-by-case basis when extenuating circumstances warrant such an extension. Requests for such extensions may be made at the time of application or after the license has been issued and it is still valid. BIS will not approve changes regarding other aspects of the license, such as the parties to the transaction and the countries of ultimate destination. An extended validity period will generally be granted where, for example, the transaction is related to a multi-year project;

when the period corresponds to the duration of a manufacturing license agreement, technical assistance agreement, warehouse and distribution agreement, or license issued under the International Traffic in Arms Regulations; when production lead time will not permit an export or reexport during the original validity period of the license; when an unforeseen emergency prevents shipment within the 4-year validity of the license; or for other similar circumstances.

* * *

* * * * *

15 CFR PART 758 -- [AMENDED]

25. The authority citations paragraph for part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

26. Section 758.1 is amended by revising the section heading, redesignating paragraphs (b)(3) through (b)(5) as (b)(5) through (b)(7) and by adding new paragraphs (b)(3) and (b)(4), to read as follows:

§758.1 The Automated Export System (AES) record.

* * * * *

(b) * * *

(1) * * *

(2) * * *

(3) For all exports of “600 series” items, regardless of value or destination, including exports to Canada;

(4) For all exports under License Exceptions Strategic Trade Authorization (STA);

* * * * *

27. Section 758.2(c) is revised by adding paragraph (c)(4) to read as follows:

§758.2 Automated Export System (AES).

* * * * *

(a) * * *

(b) * * *

(4) Exports are made under Strategic Trade Authorization; are made under Authorization Validated End User (VEU); or are of “600 series” items.

28. Section 758.6 is revised to read as follows:

§758.6 Destination control statement.

(a) *General requirement.* The Destination Control Statement (DCS) must be entered on the invoice and on the bill of lading, air waybill, or other export control document that accompanies the shipment from its point of origin in the United States to the ultimate consignee or end-user abroad. The person responsible for preparation of those documents is responsible for entry of the DCS. The DCS is required for all exports from the United States of items on the Commerce Control List that are not classified as EAR99, unless the export may be made under License Exception BAG or GFT (see part 740 of the EAR). At a minimum, and except as provided in paragraph (b), the DCS must state:

“These commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.”

(b) *“600 series” items.* For exports of “600 series” items, at a minimum, the DCS must state:

“These commodities, technology, or software controlled under [INSERT ECCN(s)] were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.”

15 CFR PART 762 -- [AMENDED]

29. The authority citations paragraph for part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

30. Section 762.2 is amended by adding paragraph (b)(48) to read as follows:

§762.2 Records to be retained.

(a) ***

(b) ***

(48) §740.11(b)(2)(iii) and (iv), License Exception GOV.

15 CFR PART 764 -- [AMENDED]

31. The authority citations paragraph for part 764 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

32. Supplement No. 1 to part 764 is amended by removing the penultimate paragraph: “Fourth, that this order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.”

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33. The authority citations paragraph for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 et seq., 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

34. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0 – Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), ECCN 0A919 is amended by revising the “Items” paragraph to read as follows:

0A919 “Military commodities” as follows (see list of items controlled).

Items: “Military commodities” with all of the following characteristics:

- a. Described on either the United States Munitions List (22 CFR Part 121) or the Munitions List that is published by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (as set out on its Web site at <http://www.wassenaar.org>), but not any item listed in any Export Control Classification Number for which the last three characters are 018 or any item in the “600 series”;
- b. Produced outside the United States;
- c. Not subject to the International Traffic in Arms Regulations (22 CFR Parts 120-130) for a reason other than presence in the United States; *and*
- d. One or more of the following characteristics:
 - d.1. Incorporate one or more cameras classified under ECCN 6A003.b.4.b;
 - d.2. Incorporate more than a *de minimis* amount of “600 series” controlled content (see §734.4 of the EAR); *or*
 - d.3. Are direct products of U.S.-origin “600 series” technology (see §736.2(b)(3) of the EAR).

35. Part 774 is amended by adding new Supplement Nos. 6 and 7 to read as follows:

Supplement No. 6 to Part 774 – Sensitive List

(Note to Supplement No. 6: If text accompanies an ECCN below, then the Sensitive List is limited to a subset of items classified under the ECCN.)

(1) Category 1

(i) 1A002 (entire entry).

(ii) 1C001 (entire entry).

(iii) 1C007.c and .d.

(iv) 1C010.c and .d.

(v) 1C012 (entire entry).

(vi) 1D002 – “software” for the “development” of organic “matrix”, metal “matrix”, or carbon “matrix” laminates or composites controlled under 1A002, 1C007.c, 1C007.d, 1C010.c or 1C010.d.

(vii) 1E001 – “Technology” according to the General Technology Note for the “development” or “production” of equipment and materials controlled under 1A002, 1C001, 1C007.c, 1C007.d, 1C010.c, 1C010.d, or 1C012.

(viii) 1E002.e and .f.

(2) Category 2

(i) 2D001 – “software”, other than that controlled by 2D002, specially designed for the “development” or “production” of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) Positioning accuracy with “all compensations available” equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along any linear axis; and

(2) Two or more axes which can be coordinated simultaneously for “contouring control”;

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Positioning accuracy with “all compensations available” equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along any linear axis, and three linear axes plus one rotary axis which can be coordinated simultaneously for “contouring control”;

(2) Five or more axes which can be coordinated simultaneously for “contouring control” and have a positioning accuracy with “all compensations available” equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along any linear axis;
or

(3) A positioning accuracy for jig boring machines, with “all compensations available”, equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along any linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) “Numerically controlled” or manual machine tools controlled under 2B003.

(ii) 2E001 – “technology” according to the General Technology Note for the “development” of “software” controlled within the specific provisions of 2D001 described in this Supplement or for the “development” of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) Positioning accuracy with “all compensations available” equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along any linear axis; and

(2) Two or more axes which can be coordinated simultaneously for “contouring control”;

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Positioning accuracy with “all compensations available” equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along any linear axis, and three linear axes plus one rotary axis which can be coordinated simultaneously for “contouring control”;

(2) Five or more axes which can be coordinated simultaneously for “contouring control” and have a positioning accuracy with “all compensations available” equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along any linear axis; or

(3) A positioning accuracy for jig boring machines, with “all compensations available”, equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along any linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) “Numerically controlled” or manual machine tools controlled under 2B003.

(iii) 2E002 – “technology” according to the General Technology Note for the “production” of equipment as follows:

(A) Machine tools for turning (ECCN 2B001.a) having all of the following:

(1) Positioning accuracy with “all compensations available” equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along any linear axis; and

(2) Two or more axes which can be coordinated simultaneously for “contouring control”;

(B) Machine tools for milling (ECCN 2B001.b) having any of the following:

(1) Positioning accuracy with “all compensations available” equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along any linear axis,

and three linear axes plus one rotary axis which can be coordinated simultaneously for “contouring control”;

(2) Five or more axes which can be coordinated simultaneously for “contouring control” and have a positioning accuracy with “all compensations available” equal to or less (better) than 3.6 μm according to ISO 230/2 (2006) or national equivalents along any linear axis;
or

(3) A positioning accuracy for jig boring machines, with “all compensations available”, equal to or less (better) than 3 μm according to ISO 230/2 (2006) or national equivalents along any linear axis;

(C) Electrical discharge machines (EDM) controlled under 2B001.d;

(D) Deep-hole-drilling machines controlled under 2B001.f;

(E) “Numerically controlled” or manual machine tools controlled under 2B003.

(3) Category 3

(i) 3A002.g.1.

(ii) 3D001 – “software” specially designed for the “development” or “production” of equipment controlled under 3A002.g.1.

(iii) 3E001 – “technology” according to the General Technology Note for the “development” or “production” of equipment controlled under 3A002.g.1.

(4) Category 4

(i) 4A001.a.2.

(ii) 4D001 – “software” specially designed for the “development” or “production” of equipment controlled under ECCN 4A001.a.2 or for the “development” or “production” of “digital computers” having an ‘Adjusted Peak Performance’ (‘APP’) exceeding 0.5 Weighted TeraFLOPS (WT).

(iii) 4E001 – “technology” according to the General Technology Note for the “development” or “production” of any of the following equipment or “software”: equipment controlled under ECCN 4A001.a.2, “digital computers” having an ‘Adjusted Peak Performance’ (‘APP’) exceeding 0.5 Weighted TeraFLOPS (WT), or “software” controlled under the specific provisions of 4D001 described in this Supplement.

(5) Category 5 – Part 1

(i) 5A001.b.3, .b.5, and .h.

(ii) 5B001.a – equipment and specially designed components or accessories therefor, specially designed for the “development”, “production” or “use” of equipment, functions or features controlled under 5A001.b.3, b.5, or .h.

(iii) 5D001.a – “software” specially designed for the “development” or “production” of equipment, functions or features controlled under 5A001.b.3, b.5, or .h.

(iv) 5D001.b – “software” specially designed or modified to support “technology” controlled by this Supplement’s description of 5E001.a.

(v) 5E001.a – “technology” according to the General Technology Note for the “development” or “production” of equipment, functions or features controlled under 5A001.b.3, b.5, or .h or “software” described in this Supplement’s description of 5D001.a.

(6) Category 6

(i) 6A001.a.1.b – systems or transmitting and receiving arrays, designed for object detection or location, having any of the following:

(A) A transmitting frequency below 5 kHz or a sound pressure level exceeding 224 dB (reference 1 μ Pa at 1 m) for equipment with an operating frequency in the band from 5 kHz to 10 kHz inclusive;

(B) Sound pressure level exceeding 224 dB (reference 1 μ Pa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

(C) Sound pressure level exceeding 235 dB (reference 1 μ Pa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

(D) Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

(E) Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

(F) Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

(1) Dynamic compensation for pressure; or

(2) Incorporating other than lead zirconate titanate as the transduction element;

(ii) 6A001.a.1.e.

(iii) 6A001.a.2.a.1, a.2.a.2, a.2.a.3, a.2.a.5, and a.2.a.6.

(iv) 6A001.a.2.b.

(v) 6A001.a.2.c – processing equipment, specially designed for real time application with towed acoustic hydrophone arrays, having “user accessible programmability” and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(vi) 6A001.a.2.d.

(vii) 6A001.a.2.e.

(viii) 6A001.a.2.f – processing equipment, specially designed for real time application with bottom or bay cable systems, having “user accessible programmability” and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(ix) 6A002.a.1.a, a.1.b, and a.1.c.

(x) 6A002.a.1.d.

(xi) 6A002.a.2.a – image intensifier tubes having all of the following:

(A) A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

(B) Electron image amplification using any of the following:

(1) A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of 12 μm or less; or

(2) An electron sensing device with a non-binned pixel pitch of 500 μm or less, specially designed or modified to achieve ‘charge multiplication’ other than by a microchannel plate; and

(C) Any of the following photocathodes:

(1) Multialkali photocathodes (e.g., S-20 and S-25) having a luminous sensitivity exceeding 700 $\mu\text{A}/\text{lm}$;

(2) GaAs or GaInAs photocathodes; *or*

(3) Other “III-V compound” semiconductor photocathodes having a maximum “radiant sensitivity” exceeding 10 mA/W.

(xii) 6A002.a.2.b.

(xiii) 6A002.a.3 – subject to the following additional notes:

Note 1: 6A002.a.3 does not apply to the following “focal plane arrays” in this

Supplement:

- a. Platinum Silicide (PtSi) “focal plane arrays” having less than 10,000 elements;
- b. Iridium Silicide (IrSi) “focal plane arrays”.

Note 2: 6A002.a.3 does not apply to the following “focal plane arrays” in this

Supplement:

- a. Indium Antimonide (InSb) or Lead Selenide (PbSe) “focal plane arrays” having less than 256 elements;
- b. Indium Arsenide (InAs) “focal plane arrays”;
- c. Lead Sulphide (PbS) “focal plane arrays”;
- d. Indium Gallium Arsenide (InGaAs) “focal plane arrays”.

Note 3: 6A002.a.3 does not apply to Mercury Cadmium Telluride (HgCdTe) “focal plane arrays” as follows in this Supplement:

- a. ‘Scanning Arrays’ having any of the following:
 - 1. 30 elements or less; or

2. Incorporating time delay-and-integration within the element and having 2 elements or less;

b. 'Staring Arrays' having less than 256 elements.

Technical Notes:

a. 'Scanning Arrays' are defined as "focal plane arrays" designed for use with a scanning optical system that images a scene in a sequential manner to produce an image;

b. 'Staring Arrays' are defined as "focal plane arrays" designed for use with a non-scanning optical system that images a scene.

Note 6: 6A002.a.3 does not apply to the following "focal plane arrays" in this List:

a. Gallium Arsenide (GaAs) or Gallium Aluminum Arsenide (GaAlAs) quantum well "focal plane arrays" having less than 256 elements;

b. Microbolometer "focal plane arrays" having less than 8,000 elements.

Note 7: 6A002.a.3.g does not apply to the linear (1-dimensional) "focal plane arrays" specially designed or modified to achieve 'charge multiplication' having 4,096 elements or less.

Note 8: 6A002.a.3.g. does not apply to the non-linear (2-dimensional) "focal plane arrays" specially designed or modified to achieve 'charge multiplication' having a maximum linear dimension of 4,096 elements and a total of 250,000 elements or less.

(xiv) 6A002.b.

(xv) 6A002.c – ‘direct view’ imaging equipment incorporating any of the following:

(A) Image intensifier tubes having the characteristics listed in this Supplement’s description of 6A002.a.2.a or 6A002.a.2.b;

(B) “Focal plane arrays” having the characteristics listed in this Supplement’s description of 6A002.a.3; or

(C) Solid-state detectors having the characteristics listed in 6A002.a.1.

(xvi) 6A003.b.3 – imaging cameras incorporating image intensifier tubes having the characteristics listed in this Supplement’s description of 6A002.a.2.a or 6A002.a.2.b

Note: 6A003.b.3 does not apply to imaging cameras specially designed or modified for underwater use.

(xvii) 6A003.b.4 – imaging cameras incorporating “focal plane arrays” having any of the following:

(A) Incorporating “focal plane arrays” specified by this Supplement’s description of 6A002.a.3.a to 6A002.a.3.e;

(B) Incorporating “focal plane arrays” specified by this Supplement’s description of 6A002.a.3.f; or

(C) Incorporating “focal plane arrays” specified by this Supplement’s description of 6A002.a.3.g.

Note 1: ‘Imaging cameras’ described in 6A003.b.4 include “focal plane arrays” combined with sufficient “signal processing” electronics, beyond the read out integrated circuit, to enable as a minimum the output of an analog or digital signal once power is supplied.

Note 2: 6A003.b.4.a does not control imaging cameras incorporating linear “focal plane arrays” with twelve 12 elements or fewer, not employing time-delay-and-integration within the element, and designed for any of the following:

- a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;
- b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;
- c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;
- d. Equipment specially designed for laboratory use; or
- e. Medical equipment.

Note 3: 6A003.b.4.b does not control imaging cameras having any of the following characteristics:

- a. A maximum frame rate equal to or less than 9 Hz;
- b. Having all of the following:
 - 1. Having a minimum horizontal or vertical ‘Instantaneous-Field -of-View (IFOV)’ of at least 10 mrad/pixel (milliradians/pixel);
 - 2. Incorporating a fixed focal-length lens that is not designed to be removed;
 - 3. Not incorporating a ‘direct view’ display; and

Technical Note: ‘Direct view’ refers to an imaging camera operating in the infrared spectrum that presents a visual image to a human observer using a near-to-eye micro display incorporating any light-security mechanism.

- 4. Having any of the following:
 - a. No facility to obtain a viewable image of the detected field-of-view; or
 - b. The camera is designed for a single kind of application and designed not to be user modified; or

Technical Note:

‘Instantaneous Field of View (IFOV)’ specified in Note 3.b is the lesser figure of the ‘Horizontal FOV’ or the ‘Vertical FOV’.

‘Horizontal IFOV’ = horizontal Field of View (FOV)/number of horizontal detector elements

‘Vertical IFOV’= vertical Field of View (FOV)/number of vertical detector elements.

c. Where the camera is specially designed for installation into a civilian passenger land vehicle of less than 3 tonnes three tons (gross vehicle weight) and having all of the following:

1. Is operable only when installed in any of the following:
 - a. The civilian passenger land vehicle for which it was intended; or
 - b. A specially designed, authorized maintenance test facility; and
2. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended.

Note: When necessary, details of the items will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 3.b.4 and Note 3.c in this Note to 6A003.b.4.b.

Note 4:6A003.b.4.c does not apply to ‘imaging cameras’ having any of the following characteristics:

- a. Having all of the following:
 1. Where the camera is specially designed for installation as an integrated component into indoor and wall-plug-operated systems or equipment, limited by design for a single kind of application, as follows:

- a. Industrial process monitoring, quality control, or analysis of the properties of materials;
 - b. Laboratory equipment specially designed for scientific research;
 - c. Medical equipment;
 - d. Financial fraud detection equipment; and
- 2. Is only operable when installed in any of the following:
 - a. The system(s) or equipment for which it was intended; or
 - b. A specially designed, authorized maintenance facility; and
 - 3. Incorporates an active mechanism that forces the camera not to function when it is removed from the system(s) or equipment for which it was intended;
- b. Where the camera is specially designed for installation into a civilian passenger land vehicle of less than 3 tonnes (gross vehicle weight), or passenger and vehicle ferries having a length overall (LOA) 65 m or greater, and having all of the following:
 - 1. Is only operable when installed in any of the following:
 - a. The civilian passenger land vehicle or passenger and vehicle ferry for which it was intended; or
 - b. A specially designed, authorized maintenance test facility; and
 - 2. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended;
 - c. Limited by design to have a maximum “radiant sensitivity” of 10 mA/W or less for wavelengths exceeding 760 nm, having all of the following:

1. Incorporating a response limiting mechanism designed not to be removed or modified; and
 2. Incorporates an active mechanism that forces the camera not to function when the response limiting mechanism is removed; and
 3. Not specially designed or modified for underwater use; or
- d. Having all of the following:
1. Not incorporating a ‘direct view’ or electronic image display;
 2. Has no facility to output a viewable image of the detected field of view;
 3. The “focal plane array” is only operable when installed in the camera for which it was intended; and
 4. The “focal plane array” incorporates an active mechanism that forces it to be permanently inoperable when removed from the camera for which it was intended.

Note: When necessary, details of the item will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 4 above.

Note 5: 6A003.b.4.c does not apply to imaging cameras specially designed or modified for underwater use.

(xviii) 6A003.b.5.

(xix) 6A004.c.

(xx) 6A004.d.

(xxi) 6A006.a.1.

(xxii) 6A006.a.2 – “magnetometers” using optically pumped or nuclear precession (proton/Overhauser) “technology” having a ‘sensitivity’ lower (better) than 2 pT (rms) per square root Hz.

(xxiii) 6A006.c.1 – “magnetic gradiometers” using multiple “magnetometers” specified by 6A006.a.1 or this Supplement’s description of 6A006.a.2.

(xxiv) 6A006.d – “compensation systems” for the following:

(A) Magnetic sensors specified by 6A006.a.2 and using optically pumped or nuclear precession (proton/Overhauser) “technology” that will permit these sensors to realize a ‘sensitivity’ lower (better) than 2 pT rms per square root Hz.

(B) Underwater electric field sensors specified by 6A006.b.

(C) Magnetic gradiometers specified by 6A006.c. that will permit these sensors to realize a ‘sensitivity’ lower (better) than 3 pT/m rms per square root Hz.

(xxv) 6A006.e – underwater electromagnetic receivers incorporating magnetometers specified by 6A006.a.1 or this Supplement’s description of 6A006.a.2.

(xxvi) 6A008.d, .h, and .k.

(xxvii) 6B008.

(xxviii) 6D001 – “software” specially designed for the “development” or “production” of equipment specified by 6A004.c, 6A004.d, 6A008.d, 6A008.h, 6A008.k, or 6B008.

(xxix) 6D003.a.

(xxx) 6E001.

(xxxi) 6E002 – “technology” according to the General Technology Note for the “production” of equipment specified by the 6A or 6B provisions described in this Supplement.

(7) Category 7

(i) 7D002.

(ii) 7D003.a.

(iii) 7D003.b.

(iv) 7D003.c.

(v) 7D003.d.1 to d.4, d.7.

(vi) 7E001.

(vii) 7E002.

(8) *Category 8*

(i) 8A001.b to .d.

(ii) 8A002.b – systems specially designed or modified for the automated control of the motion of submersible vehicles specified by 8A001.b through .d using navigation data having closed loop servo-controls and having any of the following:

(A) Enabling a vehicle to move within 10 m of a predetermined point in the water column;

(B) Maintaining the position of the vehicle within 10 m of a predetermined point in the water column; or

(C) Maintaining the position of the vehicle within 10 m while following a cable on or under the seabed.

(iii) 8A002.h and .j.

(iv) 8A002.o.3.

(v) 8A002.p.

(vi) 8D001 – “software” specially designed for the “development” or “production” of equipment in 8A001.b to .d, 8A002.b (as described in this Supplement), 8A002.h, 8A002.j, 8A002.o.3, or 8A002.p.

(vii) 8D002.

(viii) 8E001 – “technology” according to the General Technology Note for the “development” or “production” of equipment specified by 8A001.b to .d, 8A002.b (as described in this Supplement), 8A002.h, 8A002.j, 8A002.o.3, or 8A002.p.

(ix) 8E002.a.

(9) *Category 9*

(i) 9A011.

(ii) 9B001.b.

(iii) 9D001 – “software” specially designed or modified for the “development” of equipment or “technology”, specified by 9A011, 9B001.b. 9E003.a.1, 9E003.a.2 to a.5 or 9E003.a.8 or 9E003.h.

(iv) 9D002 – “software” specially designed or modified for the “production” of equipment specified by 9A011 or 9B001.b.

(v) 9D004.a and .c.

(vi) 9E001.

(vii) 9E002.

(viii) 9E003.a.1.

(ix) 9E003.a.2 to a.5, a.8, .h.

Supplement No. 7 to Part 774 – Very Sensitive List

(Note to Supplement No. 7: If text accompanies an ECCN below, then the Very Sensitive List is limited to a subset of items classified under the ECCN).

(1) Category 1

(i) 1A002.a.

(ii) 1C001 (entire entry).

(iii) 1C012 (entire entry).

(iv) 1E001 – “technology” according to the General Technology Note for the “development” or “production” of equipment and materials specified by 1A002.a, 1C001, or 1C012.

(2) Category 5 – Part 1

(i) 5A001.b.5.

(ii) 5A001.h.

(iii) 5D001.a – “software” specially designed for the “development” or “production” of equipment, functions or features specified by 5A001.b.5 or 5A001.h.

(iv) 5E001.a – “technology” according to the General Technology Note for the “development” or “production” of equipment, functions, features or “software” specified by 5A001.b.5, 5A001.h, or 5D001.a.

(3) Category 6

(i) 6A001.a.1.b.1 – systems or transmitting and receiving arrays, designed for object detection or location, having a sound pressure level exceeding 210 dB (reference 1 μ Pa at 1 m) and an operating frequency in the band from 30 Hz to 2 kHz.

(ii) 6A001.a.2.a.1 to a.2.a.3, a.2.a.5, or a.2.a.6.

(iii) 6A001.a.2.b.

(iv) 6A001.a.2.c – processing equipment, specially designed for real time application with towed acoustic hydrophone arrays, having “user accessible programmability” and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(v) 6A001.a.2.e.

(vi) 6A001.a.2.f – processing equipment, specially designed for real time application with bottom or bay cable systems, having “user accessible programmability” and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes.

(vii) 6A002.a.1.c.

(viii) 6B008.

(ix) 6D001 – “software” specially designed for the “development” or “production” of equipment specified by 6B008.

(x) 6D003.a.

(xi) 6E001 – “technology” according to the General Technology Note for the “development” of equipment or “software” specified by the 6A, 6B, or 6D provisions described in this Supplement.

(xii) 6E002 – “technology” according to the General Technology Note for the “production” of equipment specified by the 6A or 6B provisions described in this Supplement.

(4) Category 7

(i) 7D003.a.

(ii) 7D003.b.

(5) Category 8

(i) 8A001.b.

(ii) 8A001.d.

(iii) 8A002.o.3.b.

(iv) 8D001 – “software” specially designed for the “development” or “production” of equipment specified by 8A001.b, 8A001.d, or 8A002.o.3.b.

(v) 8E001 – “technology” according to the General Technology Note for the “development” or “production” of equipment specified by 8A001.b, 8A001.d, or 8A002.o.3.b.

(6) Category 9

(i) 9A011.

(ii) 9D001 – “software” specially designed or modified for the “development” of equipment or “technology” specified by 9A011, 9E003.a.1, or 9E003.a.3.a.

(iii) 9D002 – “software” specially designed or modified for the “production” of equipment specified by 9A011.

(iv) 9E001 – “technology” according to the General Technology note for the “development” of equipment or “software” specified by 9A011 or this Supplement’s description of 9D001 or 9D002.

(v) 9E002 – “technology” according to the General Technology Note for the “production” of equipment specified by 9A011.

(vi) 9E003.a.1.

(vii) 9E003.a.3.a.

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